

WC 07-204

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition of Qwest Corporation for)
Forbearance from Enforcement)
of the Commission's ARMIS and 492A)
Reporting Requirements Pursuant)
to 47 U.S.C. § 160)

WC Docket No. ____

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PETITION FOR FORBEARANCE

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PETITION FOR FORBEARANCE

I. INTRODUCTION AND SUMMARY

Qwest Corporation ("Qwest") hereby requests that the Federal Communications Commission ("Commission") exercise its authority under Section 10 of the Communications Act of 1934, as amended, ("Act")¹ and forbear from enforcing ARMIS and 492A reporting requirements against Qwest. Forbearance will relieve Qwest of the unnecessary burden of filing these reports which were adopted in another era and serve little, if any, purpose in today's competitive telecommunications environment.

Qwest is requesting that the Commission forbear from enforcing the following reporting requirements against Qwest: ARMIS Reports 43-01, 43-02, 43-03, 43-04, 43-05, 43-06, 43-07, 43-08 (in part as noted below), 495A and 495B and Report 492A. Imposing these ARMIS and 492A reporting requirements on Qwest and a small number of other incumbent local exchange carriers ("ILECs"),² that represent a shrinking share of the telecommunications marketplace,³ is

¹ 47 U.S.C. §160(c). *See also*. 47 C.F.R. § 1.53.

² The only companies that are subject to ARMIS reporting requirements are mid-sized and large ILECs. Small ILECs and all competitive providers, including competitive local exchange carriers ("CLECs"), interexchange carriers ("IXCs"), Voice over Internet Protocol ("VoIP") providers, wireless carriers and cable providers, are exempted from ARMIS filing requirements.

counterproductive and provides little useful information on the state of telecommunications markets. These reports are a holdover from rate-of-return regulation and the transition to price cap regulation and serve little purpose in today's competitive telecommunications environment. At best, the data in the reports is duplicative of data that is available to the Commission from other sources including Securities and Exchange Commission ("SEC") reports. The vast majority of Qwest's competitors are exempt from the Commission's ARMIS and 492A reporting requirements. As a result, these reports neither provide a comprehensive view of the local exchange nor exchange access markets. If the Commission determines that some of the information in the existing ARMIS reports is necessary for the Commission to perform its regulatory duties, it should collect any such information from all companies serving a given area or market. However, the fact that the Commission may need certain information to perform its regulatory duties is not sufficient reason to continue to subject Qwest and a small number of other ILECs to asymmetrical ARMIS and 492A reporting requirements.

Qwest demonstrates in this petition that enforcement of the ARMIS and 492A reporting requirements is not necessary to protect consumers or to ensure that Qwest's rates and practices are just and reasonable and not unreasonably discriminatory. Furthermore, forbearance would be consistent with the public interest by eliminating unnecessarily burdensome and asymmetric reporting requirements. Therefore, the Commission should find that Section 10's forbearance criteria are satisfied and that a grant of Qwest's petition is justified.

While the Commission has significantly reduced the ARMIS reports that mid-sized ILECs must file, Qwest, AT&T and Verizon, the only ILECs classified as "large ILECs," remain subject to the full array of the Commission's ARMIS reporting requirements.

⁷ For example, the number of wireless subscribers in the United States exceeds, by a significant margin, the number of landline access lines provided by ILECs.

II. BACKGROUND

The Commission adopted its first set of ARMIS reporting requirements in 1987 shortly after the break-up of the Bell System when Qwest⁴ and other large ILECs were subject to rate-of-return regulation. The Commission's primary purpose in establishing this set of ARMIS reports, which collect financial and operating information from carriers, was "to facilitate the timely and efficient analysis of revenue requirements and rates of return."⁵ At the time, these reports provided a fairly comprehensive view of the local exchange carrier industry since wireless was in its infancy and LECs faced minimal competition from CLECs, cable companies, and other potential competitors.

Also, some of the most contentious regulatory issues/disputes facing the Commission in the late 1980s were associated with pricing and provisioning of LEC access services. In monitoring rate-of-return-based access charges and resolving access charge disputes, ARMIS reports provided relevant, though highly-aggregated information, to the Commission and Qwest's access customers.⁶ Circumstances changed in 1991 when Qwest and certain other LECs became subject to price cap regulation at the federal level.

The Commission adopted the original 492 rate-of-return monitoring reporting requirement in 1986 "to enforce maximum rate of return prescriptions."⁷ With the adoption of

⁴ That is, its corporate predecessors in interest, Mountain Bell, Northwestern Bell and Pacific Northwest Bell, which ultimately became U S WEST Communications, Inc.

⁵ *In the Matter of Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, Report and Order, 2 FCC Rcd 5770 ¶ 1 (1987).

⁶ Prior to the adoption of price cap regulation for LECs in 1991, LEC annual access tariff filings were the subject of much dispute.

⁷ *In the Matter of Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements*, Report and Order, 1 FCC Rcd 952, 957 ¶ 51 (1986).

price cap regulation for local exchange carriers, the 492 report was modified for price cap LECs (and the name was subsequently changed to the 492A report) to remove disaggregated rate-of-return data since the price cap sharing and low-end adjustment mechanisms were only based on total interstate rate-of-return.⁸

Additional ARMIS reports were created in 1991 to collect service quality and network infrastructure information associated with the introduction of price cap regulation for Qwest and certain other ILECs.⁹ The Commission established the infrastructure and quality of service reports, ARMIS 43-05 through 43-08, because it was concerned that LECs transitioning from rate-of-return regulation to price cap regulation might have an incentive to increase profits by allowing their service to deteriorate.¹⁰ History has shown that this concern was unfounded and ILEC service quality did not decline with the introduction of price cap regulation. Thus, the Commission's original purpose in adopting ARMIS quality of service and infrastructure reports has long since ceased to exist -- but Qwest remains subject to these reporting requirements long after its transition to price cap regulation.

The rate-of-return environment in which the Commission adopted the ARMIS and 492A reporting requirements no longer exists. Qwest has not been subject to cost-based rate-of-return regulation in establishing prices for its interstate access services since 1991. The Commission eliminated the price cap sharing mechanism that was based on a carrier's overall rate-of-return in

⁸ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Red 6786, 6833 ¶ 380, 6834 ¶ 384 (1990) ("LEC Price Cap Order"); Order on Reconsideration, 6 FCC Red 2637, 2728-31 ¶¶ 194-200 (1991).

⁹ *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, 6 FCC Red 2974, 2975-76 ¶ 3, 2985 ¶ 25 (1991) (as corrected June 4, 1991 and June 25, 1991).

¹⁰ See *LEC Price Cap Order*, 5 FCC Red at 6827 ¶ 334.

the mid-1990s.¹¹ Qwest's last link to rate-of-return regulation at the federal level was severed when Qwest waived its right to take advantage of the low-end adjustment in the price cap mechanism in 2000 when it introduced contract tariffs for special access under the Commission's pricing flexibility rules.¹² Today, neither Qwest's rate base nor its rate-of-return plays a role in establishing Qwest's prices under price cap regulation.¹³

Thus, with the adoption of price cap regulation, it is clear that neither Qwest's ARMIS reports (*i.e.*, reports containing financial and operating data), nor its 492A report are needed for their primary purpose -- to analyze Qwest's costs and rate-of-return so that the Commission could ensure that Qwest's rates were just and reasonable. Nor is the 492A report needed to ensure that Qwest is complying with the Commission's price cap sharing and low-end adjustment provisions since these adjustments no longer exist for Qwest. Similarly, sixteen years after Qwest's transition to price cap regulation, ARMIS quality of service and

¹¹ *In the Matter of Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, 16645 ¶ 1 (1997).

¹² Price cap LECs, such as Qwest, are allowed to offer special access under contract tariffs under the Commission's *Pricing Flexibility Order*. See *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order*").

¹³ In adopting the *Pricing Flexibility Order* in 1999, the Commission gave price cap LECs even greater freedom to establish interstate tariffs in response to competition and to enter into certain types of contract tariffs based on individual negotiations. See 47 C.F.R. § 69.727. In addition to waiving the right to make low-end adjustments, the Commission required LECs to remove contract tariffs from price cap regulation to ensure that other access customers would not pay higher prices because of pricing flexibility. See *Pricing Flexibility Order*, 14 FCC Rcd at 14287-88 ¶ 122. Qwest's rate of return plays no role in the establishment of contract tariffs. Any risks associated with the provision of services under contract tariffs are borne by Qwest's shareholders.

infrastructure reports are not necessary to ensure that Qwest's quality of service under price cap regulation does not deteriorate from what it had been under rate of return regulation.

The structure of the telecommunications marketplace has changed dramatically as a result of the 1996 Act's interconnection, unbundling and resale requirements and phenomenal growth in local competition from wireless service providers, cable companies, CLECs, and VoIP providers. Today, Qwest only accounts for a moderate and shrinking share of the market for telecommunications services within its service area. Consequently, Qwest's ARMIS reports are neither representative of the size of the overall market in Qwest's region nor industry trends.¹⁴ If the Commission determines that some portion of the information contained in the current ARMIS and 492A reports is necessary for the Commission to perform its regulatory duties, it should collect this information from all carriers in an expanded Form 477, as AT&T suggested in

¹⁴ It is well-documented that Qwest's number of access lines continues to fall while the overall market for local exchange service (including wireless service) continues to grow. During the period from December 2000 to June 2007, Qwest's retail access lines decreased from 17,091,000 to 11,887,000, a decrease of over five million lines (sources: Qwest 4th Quarter 2000 Form 8-K; Qwest 2nd Quarter 2007 Form 10-Q (as filed with the SEC)). The number of wireless subscribers in Qwest's territory continues to grow and far exceeds Qwest's access line count. The number of wireless subscribers located in the states in Qwest's service area totaled 11,062,000 in June 2000 and 26,908,000 in June 2006 (source: FCC Local Telephone Competition Report, Table 14, June 30, 2006, rel. January 2007). While Qwest resells wireless service within its service area, its share of the wireless market is minimal (*i.e.*, approximately 3%) (source: Qwest 2nd Quarter 2007 Earnings Release, Attachment D). Cable companies also represent a significant and growing source of competition for Qwest and other ILECs. The number of residential telephone customers obtaining service from cable companies grew from 1.3 million in June 2001 to 12.1 million in June 2007, an increase of over 900%. See National Cable & Telecommunications Association, www.ncta.com, Residential Telephone Customers. Similar trends appear to be occurring in VoIP subscribership. In a recent proceeding concerning universal service contribution methodology, the Commission cited forecasts indicating that residential VoIP subscribership could reach 19 million by the end of 2009. See *In the Matter of Universal Service Contribution Methodology: Federal-State Joint Board on Universal Service*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Red 7518, 7529 n.78, citing to the Telecommunications Industry Association's "TIA's 2006 Telecommunications Market Review and Forecast," (2006).

its Petition for ARMIS relief.¹⁵ However, the fact that the Commission, ultimately, may determine that it needs certain industry-wide data to perform its regulatory duties does not provide a sufficient basis for declining to forbear from enforcing its ARMIS and 492A reporting requirements against Qwest.¹⁶

III. THE COMMISSION SHOULD FORBEAR FROM APPLYING ARMIS AND 492A REPORTING REQUIREMENTS TO QWEST

In this petition Qwest requests that the Commission forbear from applying the following reporting requirements to Qwest.¹⁷

ARMIS Report 43-01, Annual Summary
ARMIS Report 43-02, USOA Report
ARMIS Report 43-03, Joint Cost Report
ARMIS Report 43-04, Separations and Access Report
ARMIS Report 43-05, Service Quality Report

¹⁵ AT&T Petition for Forbearance, WC Docket No. 07-139, filed June 8, 2007 at 7 (“AT&T Petition”). *And see*, Public Notice, DA 07-332, rel. July 20, 2007.

¹⁶ Qwest does not question that the Commission may need certain information to perform its statutory duties under the Communications Act. However, with the adoption of price cap regulation and the severing of the last links to rate-of-return regulation, it is difficult, if not impossible, to claim that ARMIS and 492A reports are necessary for the Commission to perform its regulatory duties. These reports only provide information on a small number of ILECs covering a small share of the overall market for telecommunications services. Conversely, Form 477 provides the Commission with a comprehensive view of local service and broadband competition and includes separate sections on broadband deployment, local telephone service and mobile telephone service. With few exceptions, all facilities-based providers of broadband connections to end-user locations, providers of wired or fixed wireless local telephone services, and providers of mobile telephony services must file Form 477 reports. (*See In the Matter of Local Telephone Competition and Broadband Reporting*, Report and Order, 19 FCC Rcd 22340, 22341-43 ¶¶ 1-4, 22345 ¶ 8 (2004). *Also see*, 47 C.F.R. §§ 1.7001 and 43.11.) Thus, if the Commission determines that it needs certain industry-wide information -- similar to information that Qwest currently reports on its ARMIS reports -- to perform its regulatory duties, the appropriate vehicle for collecting such information would be the Form 477.

¹⁷ The ARMIS and 492A reporting requirements for which Qwest is seeking forbearance are required by § 43.21(a), (d)-(k) and §§ 65.1(b)(2) and 65.600(a) and (d) of the Commission’s rules and associated *ARMIS Orders*. Qwest also seeks forbearance from §§ 43.01, 43.21, generally, and § 69.1(c) of the Commission’s rules and Sections 4(i), (j) and 220 of the Act and any other portion of the Act, Commission rule or order to the extent necessary to relieve Qwest of ARMIS and 492A reporting requirements. 47 U.S.C. §§ 154(i), (j) and 220.

ARMIS Report 43-06, Customer Satisfaction Report
ARMIS Report 43-07, Infrastructure Report
ARMIS Report 43-08, Operating Data Report (with the exception of
Table III, columns FC, FD, and FE)¹⁸
ARMIS Report 495A, Forecast of Investment Usage
ARMIS Report 495B, Actual Usage of Investment
492A Report, Rate-Of-Return Monitoring Report

It should be recognized that even with a grant of Qwest's petition, Qwest still will remain subject to a wide variety of financial and regulatory reporting and audit requirements at both state and federal levels.¹⁹

IV. CRITERIA FOR FORBEARANCE UNDER SECTION 10 OF THE ACT

Section 10 of the Act directs the Commission to remove needless regulation and creates a strong presumption in favor of less regulation. Section 10 requires that the Commission "shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier

¹⁸ The data in ARMIS Report 43-08, Table III, columns FC, FD and FE, provides business line counts associated with the Commission's establishment of non-impairment thresholds in the *Triennial Review Remand Order*. See *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2595 ¶ 105 (2005) (subsequent history omitted). And see, 47 C.F.R. § 51.5.

¹⁹ For example, Qwest Corporation, Qwest's ILEC, is required to file a Form 10K annual report with the SEC and with the Commission. See 47 C.F.R. § 43.21(b). Qwest Corporation also remains subject to: the Commission's Part 64 biennial audit requirement which covers both affiliate transactions and cost assignments between regulated and non-regulated activities within the ILEC (see 47 C.F.R. § 64.904); the Commission's outage reporting requirements (see 47 C.F.R. § 4. et seq.); competition and broadband reporting requirements in Form 477 (see 47 C.F.R. § 43.11); and the Commission's recently adopted special access metrics reporting requirements (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, 22 FCC Rcd 5207 (2007); see also *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 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, WC Docket No. 02-112, CC Docket No. 00-175, WC Docket No. 06-120, FCC 07-159, rel. Aug. 31, 2007 ¶ 97).

or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets” if the Commission finds 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, 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.²⁰

In making its public interest determination, Section 10 requires that the Commission consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.²¹

In determining whether a regulation (or statutory provision) “is unnecessary for the protection of consumers” (*i.e.*, Section 10’s second criterion above), the Commission has found that a regulation is “necessary” if there is a “strong connection” between the regulation and the goal of consumer protection.²²

²⁰ 47 U.S.C. § 160(a).

²¹ 47 U.S.C. § 160(b). However, the Commission has rejected “as inconsistent with the statutory language [the] suggestion that section 10(b) precludes forbearance absent a showing that it would enhance competition among providers of telecommunications services.” *See, In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2650 ¶ 46 (1998). “The plain meaning of this statutory language [Section 10(b)] is that a determination that forbearance would promote competition is a possible, though not a necessary, basis for a finding that forbearance would be consistent with the public interest.” *Id.* at 2651 ¶ 48.

²² *In the Matter of Petition for Forbearance From E911 Accuracy Standards Imposed On Tier III Carriers For Locating Wireless Subscribers Under Rule Section 20.18(h)*, Order, 18 FCC Rcd

V. FORBEARANCE IS REQUIRED UNDER SECTION 10 OF THE ACT

Forbearance from enforcing the ARMIS and 492A reporting requirements against Qwest under Section 10 is not “discretionary” -- it is “mandatory” once the Commission determines that Section 10’s criteria have been met.²³

A. ARMIS Report 43-01

The ARMIS 43-01 Report is a summary report that contains highly aggregated financial data on costs, revenues, access demand, and pole attachment calculations by study area.²⁴ With the exception of pole attachment information, the data in this report has virtually no impact on Qwest’s interstate rates. Even pole attachment data is not related to any Qwest tariff and is only infrequently used in Commission complaint proceedings.²⁵ Clearly, under price cap regulation, the application of the ARMIS 43-01 reporting requirement is not necessary to ensure that Qwest’s rates and practices are just, reasonable and not unreasonably discriminatory. Therefore, the Commission should find that the first forbearance criterion is satisfied.

24648, 24654 ¶ 14 (2003). *Also see, In the Matter of Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14978-79 ¶ 16 (2002). The court upheld the Commission’s interpretation of the term “necessary” as a permissible interpretation under *Chevron* deference. *See Cellular Telecoms. & Internet Ass’n v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

²³ Forbearance is not limited to specific provisions of the Act but also includes Commission regulations, such as the ARMIS and 492A reporting requirements, that are the subject of this petition. The only restriction on the Commission’s forbearance authority is contained in Section 10(d) which limits the Commission from forbearing from applying Sections 251(c) and 271 until those requirements have been fully implemented. 47 U.S.C. § 160(d).

²⁴ *See* FCC ARMIS Home Page. ARMIS Data Descriptions.

²⁵ Pole attachment rates and arrangements are not tariffed and are largely the result of private negotiations between Qwest and other parties. In instances where a state has not exercised authority to regulate pole attachments -- the reasonableness of rates in pole attachment agreements may be challenged in a complaint proceeding.

The second statutory criterion for forbearance requires that the Commission find the ARMIS 43-01 reporting requirement is not necessary for protection of consumers. As noted in Section IV above, in order for the Commission to find that a regulation is “necessary” for protection of consumers, it must find a “strong connection” between the regulation and consumer protection. There is virtually no relationship between the information reported in ARMIS Report 43-01 and consumer protection. Therefore, the Commission should find that the second forbearance criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the ARMIS 43-01 reporting requirement is consistent with the public interest. The information in this report is highly aggregated financial data which is not used in establishing Qwest’s regulated rates nor is it a unique source of financial information on Qwest’s performance.²⁶ Furthermore, this reporting requirement was adopted when Qwest was subject to rate-of-return regulation -- which is no longer the case. The Commission should find that forbearance from applying the ARMIS 43-01 reporting requirement to Qwest is consistent with the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Report 43-01.

²⁶ Similar information on Qwest’s financial performance is available publicly in Qwest Corporation’s Form 10K annual report which is filed annually with the SEC and is available for public inspection on the SEC’s website on the Internet.

B. ARMIS Report 43-02

ARMIS Report 43-02, the USOA report,²⁷ requires that Qwest submit detailed information on all balance sheet and income statement accounts in the USOA (*i.e.*, all Class A level accounts specified in Part 32).²⁸ This reporting requirement was adopted when Qwest was subject to rate-of-return regulation and is an outgrowth of the Commission's Form M reports (that existed prior to the implementation of the USOA in 1988). Qwest reports similar information in its 10K report which is filed with the SEC.²⁹

The information reported in the USOA report has no effect on Qwest's rates under price cap regulation. As a result, the Commission should find that the ARMIS 43-02 report is no longer necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory and that Section 10's first criterion for forbearance is satisfied.

The second statutory criterion for forbearance requires that the Commission determine whether the ARMIS 43-02 reporting requirement is necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is necessary for protection of consumers, it must find a "strong connection" between the regulation and consumer protection. ARMIS Report 43-02 provides little, if any, protection to consumers since it contains financial

²⁷ See FCC ARMIS Home Page, ARMIS Data Descriptions.

²⁸ Only Qwest, AT&T and Verizon are required to file this report since the Commission exempted mid-sized ILECs from filing the ARMIS 43-02, 43-03 and 43-04 Reports in its *Phase 2 Order* on accounting simplification. See *In the Matter of 2000 Biennial Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286 ("Phase III FNPRM"), 16 FCC Rcd 19911, 19981-82 ¶ 194 (2001).

²⁹ To clarify, both Qwest Corporation, Qwest's ILEC, and Qwest Communications International Inc., Qwest's parent company, file Form 10K annual reports with the SEC.

data that has no impact on the prices of Qwest's regulated services. Therefore, the Commission should find that ARMIS Report 43-02 is not necessary to protect consumers and that Section 10(a)'s second criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the ARMIS 43-02 reporting requirement is consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."³⁰ This ARMIS reporting requirement was adopted when Qwest was subject to rate-of-return regulation and Qwest's access rates were revised annually based on costs. This is no longer true under price cap regulation. Clearly, the Commission's original purpose for adopting this ARMIS report has long ceased to exist and the Commission should find that forbearance would be consistent with the public interest. Furthermore, it would be a pro-competitive step on the Commission's part to reduce Qwest's regulatory reporting burden and associated costs.³¹

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Report 43-02.

³⁰ 47 U.S.C. § 160(b).

³¹ While Section 10 does not require the Commission to find that competition is enhanced in order to find that Section 10's conditions have been satisfied, it would truly be at odds with the Commission's pro-competitive agenda if it did not forbear from enforcing its ARMIS reporting requirements against Qwest.

C. ARMIS Report 43-03

The Joint Cost Report, ARMIS Report 43-03, is filed on a study area basis and contains data on the assignment of joint costs between Qwest's regulated and non-regulated activities.³² Only Qwest, AT&T and Verizon are subject to this reporting requirement.³³ Even in the absence of this report, Qwest will continue to be subject to the Commission's Part 64 rules including the requirement that Qwest file (and update) a cost allocation manual ("CAM")³⁴ and that Qwest's compliance with its CAM be the subject of an independent audit biennially including Qwest's assignment of costs between regulated and non-regulated activities.³⁵

The first statutory criterion for forbearance requires that the Commission determine whether the ARMIS 43-03 report is necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. The Commission should find that it is not necessary. With few exceptions, none of the information in this report could affect Qwest's rates under price cap regulation.³⁶ Therefore, the Commission should find that the first criterion for forbearance is satisfied.

The second statutory criterion for forbearance requires that the Commission determine whether the ARMIS 43-03 reporting requirement is not necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is "necessary" for protection of consumers, it must find a "strong connection" between the regulation and consumer

³² See FCC ARMIS Home Page, ARMIS Data Descriptions.

³³ See note 28, *supra*.

³⁴ 47 C.F.R. § 64.903.

³⁵ 47 C.F.R. § 64.904.

³⁶ Qwest acknowledges that cost re-assignments from regulated to non-regulated activities could result in exogenous cost adjustments under price cap regulation. However, even in the absence of the ARMIS 43-03 reporting requirement, Qwest will be required to identify and include any such exogenous cost adjustments in its annual access tariff filing. See 47 C.F.R. § 61.45(d).

protection. There is virtually no relationship between the information reported in ARMIS Report 43-03 and consumer protection. Therefore, the Commission should find that the second forbearance criterion has been satisfied.

The third forbearance criterion requires that the Commission find that forbearance is consistent with the public interest. This reporting requirement was adopted prior to price caps when Qwest was subject to rate-of-return regulation and rates were based on costs. This is no longer the case. Additionally, the Commission's Part 64 CAM and audit requirements provide adequate protection against any inappropriate assignment of costs to Qwest's regulated activities. Therefore, the Commission should find that forbearance from applying the ARMIS 43-03 reporting requirement to Qwest is consistent with the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Report 43-03.

D. ARMIS Report 43-04

ARMIS Report 43-04 shows the separation of Qwest's revenues and costs between the interstate and state jurisdictions and the assignment of interstate amounts among Part 69 categories.³⁷ While this information was of relevance to the Commission prior to the adoption of price cap regulation, it plays no role in the establishment of Qwest's interstate rates today.³⁸ The fact that certain state regulatory agencies may find the information in the ARMIS Report 43-04 to be of interest for purposes of comparisons between states is not sufficient reason for the

³⁷ See FCC ARMIS Home Page, ARMIS Data Descriptions. Only Qwest, AT&T and Verizon remain subject to this ARMIS reporting requirement. See note 28, *supra*.

³⁸ Qwest acknowledges that changes in the Commission's Part 36 separations rules could result in exogenous cost adjustments under price cap regulation. However, even in the absence of the ARMIS 43-04 reporting requirement, Qwest will be required to identify and include any such exogenous cost adjustments in its annual access tariff filing. See 47 C.F.R. § 61.45(d).

Commission to refrain from forbearance.³⁹ The few state regulatory commissions in Qwest's service area that require intrastate data to establish state rates or for other regulatory purposes have ample authority to gather all necessary information. Most states in Qwest's service area have no need for such data because they employ some form of incentive regulation that is not based on intrastate costs. Forbearance from enforcing the ARMIS 43-04 reporting requirement against Qwest will not in any way impinge on either the Commission's or the states' ability to perform their regulatory duties. Moreover, both the Commission and the states have sufficient authority to conduct audits that they deem necessary and to collect any additional information that is necessary for ratemaking purposes. Thus, there should be no question that the ARMIS Report 43-04 is not necessary for either the Commission or states to establish lawful rates under existing regulatory regimes.

The first statutory criterion for forbearance requires that the Commission determine whether the ARMIS 43-04 report is necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. Clearly, the ARMIS Report 43-04 is not necessary. As noted above (*i.e.*, other than in the case of separations rule changes), interstate/state cost assignments have no effect on Qwest's interstate rates. Therefore, the Commission should find that the first criterion for forbearance is satisfied.

The second criterion for forbearance requires that the Commission find that the ARMIS 43-04 reporting requirement is not necessary for protection of consumers. As noted above, in

³⁹ It is Qwest's position that the Commission may not refrain from exercising its forbearance authority when there is not a federal need for a reporting requirement. Qwest previously pointed out that the Commission's authority to adopt accounting and reporting requirements to meet the needs of state regulators is quite limited. *See* Comments of Qwest, WC Docket No. 02-269, *In the Matter of Federal-State Joint Conference on Accounting Issues*, filed Jan. 30, 2004, at 11-13; and Reply of Qwest, filed Feb. 17, 2004, at 5-6. *See also* Phase III FNPRM, note 28, *supra*, 16 FCC Rcd at 19985 ¶ 207 ("We believe that, if we cannot identify a federal need for a regulation, we are not justified in maintaining such a requirement at the federal level.").

order for the Commission to find that a regulation is “necessary” for protection of consumers, it must find a “strong connection” between the regulation and consumer protection. Given that there is practically no relationship between the information reported in the ARMIS Report 43-04 and Qwest’s interstate rates, it should not be possible to find that there is a strong connection between the ARMIS 43-04 reporting requirement and consumer protection. Therefore, the Commission should find that the second forbearance criterion has been satisfied.

The third forbearance criterion requires that the Commission find that forbearance is consistent with the public interest. The ARMIS 43-04 reporting requirement was adopted prior to price caps when Qwest was subject to rate-of-return regulation and rates were based on costs. This is no longer the case. As a result, the information in the ARMIS 43-04 report has no bearing on Qwest’s interstate rates. Furthermore, the Commission’s Part 36 rules remain in place and control Qwest’s assignment of costs between jurisdictions. Therefore, the Commission should find that forbearance from applying the ARMIS 43-04 reporting requirement to Qwest is consistent with the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Report 43-04.

E. ARMIS Reports 43-05 and 43-06

ARMIS Report 43-05 contains information on service quality by study area and for Qwest as a whole.⁴⁰ This report includes data on installation and repair intervals, trunk

⁴⁰ Only price cap ILECs are required to file this report.

blockages, switch data, and service quality complaints.⁴¹ ARMIS Report 43-06 contains the results of customer satisfaction surveys⁴² concerning various aspects of Qwest's service.⁴³

The first statutory criterion for forbearance requires that the Commission find that its ARMIS 43-05 and 43-06 reporting requirements are not necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. These reports are not necessary. As noted above, Qwest's regulated rates are determined primarily by the price cap mechanism. ARMIS Reports 43-05 and 43-06 provide information on service quality and customer satisfaction that is of limited value for comparison purposes and has no effect on Qwest's rates and practices. Forbearance from these reporting requirements should allow Qwest to reduce unnecessary reporting costs and, thereby, become a more effective competitor. Accordingly, the Commission should find that ARMIS Reports 43-05 and 43-06 are not "necessary" to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory and that Section 10's first criteria is satisfied.

The second statutory criterion for forbearance requires that the Commission determine whether the ARMIS 43-05 and 43-06 reporting requirements are necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is necessary for protection of consumers, it must find a "strong connection" between the regulation and consumer protection. The ARMIS reports in question provide little, if any, protection to consumers. ARMIS Reports 43-05 and 43-06, covering Service Quality and Customer Satisfaction, were adopted in 1991 when Qwest and other ILECs were transitioning to price cap regulation. These reports do not provide a comprehensive view of service quality within

⁴¹ See FCC ARMIS Home Page. ARMIS Data Descriptions.

⁴² Only mandatory price cap ILECs are required to file ARMIS Report 43-06.

⁴³ See FCC ARMIS Home Page. ARMIS Data Descriptions.

Qwest's region nor do they provide a benchmark against which Qwest's service can be evaluated or any indication of the service quality of Qwest's competitors.⁴⁴ Furthermore, as the Commission has recognized, much of the information in these ARMIS reports is of a technical nature and meaningless to the average consumer.⁴⁵ In its 2000 Biennial Review addressing service quality reporting requirements, the Commission proposed "to eliminate the bulk of the existing service quality reporting requirements, which no longer make sense in today's marketplace."⁴⁶ The Commission should find that ARMIS Reports 43-05 and 43-06 are not necessary to protect consumers and that Section 10(a)'s second criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission find that forbearance from applying the ARMIS 43-05 and 43-06 reporting requirements to Qwest is consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."⁴⁷ As the Commission has acknowledged these ARMIS reporting requirements were first adopted in 1991, in an abundance of caution, to monitor the service quality of Qwest and other large ILECs when these ILECs were transitioning from rate-of-return regulation to price cap regulation. Clearly, the Commission's original purpose for adopting these ARMIS reports has long ceased to exist. As such, forbearance would be consistent with the public interest.

⁴⁴ "Service quality information is of limited use to customers if they do not have access to comparable information for all carriers in their area." *In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking, 15 FCC Red 22113, 22117 ¶ 10 (2000).

⁴⁵ "Thus, while consumers have been technically able to monitor trends using this information, much of it is technical in nature and may not be easily translated by consumers." *Id.* at 22118 ¶ 14.

⁴⁶ *Id.* at 22114 ¶ 2.

⁴⁷ 47 U.S.C. § 160(b).

Furthermore, forbearance would support competition by reducing unnecessary regulatory reporting burdens (and associated costs) imposed on Qwest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Reports 43-05 and 43-06.

F. ARMIS Reports 43-07 and 43-08

ARMIS Report 43-07 is an infrastructure report, which is filed on a study area and operating company basis by mandatory price cap LECs and contains data on switching equipment and transmission facilities.⁴⁸ ARMIS Report 43-08 contains outside plant statistics and other operating data by state and is filed by mid-sized and large ILECs.⁴⁹ These reports provide no information about other service providers (*i.e.*, other than for the small number of ILECs that submit these reports) and little, if any, usable information to end-user customers. Moreover, they do not provide an accurate picture of Qwest's infrastructure investments and operations or of industry-wide infrastructure investments and marketplace trends.⁵⁰ Consequently, ARMIS Reports 43-07 and 43-08 provide little information that the Commission could usefully employ in developing comprehensive industry policies.

The first statutory criterion for forbearance requires that the Commission determine whether the application of its ARMIS 43-07 and 43-08 reporting requirements are necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory.

⁴⁸ See FCC ARMIS Home Page, ARMIS Data Descriptions.

⁴⁹ *Id.*

⁵⁰ Qwest's comments only refer to those sections of ARMIS Report 43-08 for which Qwest is seeking forbearance. As noted above, Qwest is not seeking forbearance from the requirement to report business line data contained in ARMIS Report 43-08, Table III, columns FC, FD and FE. See Section III, *supra*, and note 18, *supra*.

The Commission should find that the first criterion is satisfied because none of the information in these reports is used in the establishment of Qwest's regulated interstate rates. Qwest's rates are governed by price cap regulation and Qwest establishes its rates in accordance with relevant price cap constraints. As such, forbearance would have no impact on Qwest's interstate rates or practices. Accordingly, the Commission should find that ARMIS Reports 43-07 and 43-08 are not "necessary" to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory.

The second statutory criterion for forbearance requires that the Commission determine whether enforcement of its ARMIS 43-07 and 43-08 reporting requirements is necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is necessary for protection of consumers, it must find a "strong connection" between the regulation and consumer protection. The ARMIS reports in question provide little, if any, protection to consumers. These reports were adopted in another era to monitor network investment and service quality. With the advent of price cap regulation and competition these reports no longer serve a valid regulatory purpose.⁵¹ Today, it is all but impossible to find any connection between these ARMIS reporting requirements and consumer protection, let alone a "strong connection." Therefore, the Commission should find that the ARMIS 43-07 and 43-08 reporting requirements are not necessary to protect consumers and that Section 10(a)'s second criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission find that forbearance from applying the ARMIS 43-07 and 43-08 reporting requirements to Qwest is

⁵¹ The Commission acknowledged as much with respect to ARMIS Report 43-08 in its Phase 2 Order addressing accounting simplification and ARMIS reporting requirements. *See Phase 2 Order*, 16 FCC Rcd at 19970 ¶ 160.

consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”⁵² These ARMIS reporting requirements were adopted in another era and the Commission’s original purpose for adopting these ARMIS reporting requirements has long since ceased to exist. Not only would forbearance be consistent with the public interest, it also would be a pro-competitive step. Accordingly, the Commission should find that forbearance from the ARMIS 43-07 and 43-08 reporting requirements would serve the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Reports 43-07 and 43-08.

G. ARMIS Reports 495A and 495B

ARMIS Report 495A contains forecasts of expected regulated and non-regulated central office equipment (“COE”) and outside plant (“OSP”) investment usage by study area and for Qwest as a whole.⁵³ ARMIS Report 495B is a companion report to the 495A and contains data on actual usage of regulated and non-regulated investment.⁵⁴ These reports contain proprietary Qwest information and are filed in accordance with the Commission’s rules governing confidential submissions. Reports 495A and B were adopted in conjunction with the Commission’s *CI-III* decision which allowed LECs to provide regulated and non-regulated services out of the same regulated entity.⁵⁵ These reports provide information associated with the

⁵² 47 U.S.C. § 160(b).

⁵³ See FCC ARMIS Home Page, ARMIS Data Descriptions.

⁵⁴ *Id.*

⁵⁵ See 47 C.F.R. § 64.901(b)(4).

implementation of the Commission's Part 64 cost assignment rules. When these reports were first created, Qwest was subject to rate of return regulation and the assignment of joint costs had a direct effect on Qwest's interstate rates. The direct link between costs and interstate rates was severed in 1991 (*i.e.*, when the Commission adopted price cap regulation) and no longer exists.⁵⁶

The first statutory criterion for forbearance requires that the Commission determine whether the 495A and 495B reporting requirements are necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. The Commission should find that these reports are not necessary because, with few exceptions,⁵⁷ none of the information in them will have an impact on Qwest's rates under price cap regulation. Therefore, the Commission should find that the first forbearance criterion is satisfied.

The second statutory criterion for forbearance requires that the Commission determine whether enforcement of its 495A and 495B reporting requirements is necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is necessary for protection of consumers, it must find a "strong connection" between the regulation and consumer protection. Under price cap regulation, it is difficult, if not impossible, to find that a strong connection exists between the 495A and 495B reporting requirements and consumer protection. Therefore, the Commission should find that the second forbearance criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the 495A and 495B reporting requirements is consistent with the public interest. As noted above, these reporting requirements were adopted when Qwest was

⁵⁶ Qwest acknowledges that reallocations of investment from regulated to non-regulated activities could have an impact on price cap rates as a result of exogenous cost adjustments. *See* 47 C.F.R. §61.45(d)(v). *Also see*, note 36, *supra*.

⁵⁷ *Id.*

subject to rate-base rate-of-return regulation prior to the transition to price cap regulation in 1991. Forbearance from the 495A and 495B reporting requirements would be consistent with the public interest. Qwest will continue to be subject to Part 64's CAM and audit requirements including audit of Qwest's assignment of costs between regulated and non-regulated activities. Therefore, the Commission should find that forbearance would be consistent with the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for ARMIS Reports 495A and 495B.

H. Report 492A

The 492A report, which is entitled "Price Cap Regulation, Rate-Of-Return Monitoring Report," contains information necessary to calculate a price cap carrier's rate of return and is aggregated at the same jurisdictional level as a carrier's tariffs.⁵⁸ The 492A also contains a line item identifying the "sharing/low end adjustment amount" for the reporting price cap carrier.

The first statutory criterion for forbearance requires that the Commission determine whether the 492A reporting requirement is necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. The Commission should find that Report 492A is not necessary. The rate of return information in the 492A report is not used to establish Qwest's regulated interstate rates (*i.e.*, since elimination of the price cap sharing requirement and Qwest's waiver of the low-end adjustment).⁵⁹ Qwest's rates are governed by

⁵⁸ See FCC Home Page, Common Carrier Requirements, FCC Forms 492 and 492A, Rate of Return and FCC Forms, Form 492A.

⁵⁹ The Commission's initial price cap mechanism contained two important adjustments that were triggered by a carrier's rate-of-return level: 1) the sharing requirement and 2) the low-end adjustment. Based on these adjustments, a carrier's price cap could be adjusted prospectively

price cap regulation and Qwest sets its rates in accordance with relevant price cap constraints (e.g., Qwest's overall price cap index, basket sub-indices, etc.). Consequently, forbearance from the 492A filing requirement would have no impact on Qwest's interstate rates or practices.

The second statutory criterion for forbearance requires that the Commission determine whether enforcement of its 492A reporting requirements is necessary for protection of consumers. As noted above, in order for the Commission to find that a regulation is necessary for protection of consumers, it must find a "strong connection" between the regulation and consumer protection. There is virtually no connection between rate-of-return data reported in the 492A report and consumer protection since this data has no effect on Qwest's interstate rates or services. Therefore, the Commission should find that the 492A reporting requirement is not necessary to protect consumers and that Section 10(a)'s second criterion is satisfied.

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the 492A reporting requirement is consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."⁶⁰ The

(for the next tariff year) if the carrier's rate-of-return either exceeded or fell below certain specified rate-of-return levels. Since then, price cap regulation has been modified and the Commission no longer has any need to collect rate-of-return information from price cap LECs such as Qwest that have waived any right to take advantage of the low-end adjustment. Today, neither the sharing requirement nor the low-end adjustment applies to most price cap LECs. The Commission removed sharing requirements from its price cap regulatory mechanism in the mid-1990s. Later, most large ILECs waived any right to use the low-end adjustment when they took advantage of Phase 1 or Phase 2 regulatory relief provided by the *Pricing Flexibility Order*, which the Commission adopted in 1999. See *Pricing Flexibility Order*, 14 FCC Rcd at 14307 ¶¶ 167-68. See also 47 C.F.R. §69.731. Thus, the rate-of-return adjustments that formed the basis for Form 492A's reporting requirements no longer exist for Qwest and Qwest's rate-of-return level does not affect Qwest's interstate rates.

⁶⁰ 47 U.S.C. § 160(b).

492A reporting requirement was adopted when Qwest and certain other LECs became subject to price cap regulation containing rate-of-return-based sharing and low-end adjustments. Neither of these adjustments applies to Qwest any longer. Consequently, requiring Qwest to comply with the 492A reporting requirement no longer serves a bona fide regulatory purpose.

Not only would forbearance be consistent with the public interest, it also would promote competition. By forbearing from applying its 492A reporting requirement to Qwest, the Commission would be taking a step towards equalizing regulatory reporting requirements among competitors. Accordingly, the Commission should find that forbearance would serve the public interest.

In summary, for all of the reasons above and below, the Commission should find that each of the three criteria for forbearance under Section 10 of the Act is satisfied for Report 492A.

I. Section 10(d) Does Not Bar Forbearance Because Sections 251(c) And 271 Have Been Fully Implemented

Section 10(d) does not allow the Commission to “forbear from applying the requirements of Section 251(c) or 271 . . . until it determines that those requirements have been fully implemented.”⁶¹ These provisions of the Act do not prevent the Commission from granting Qwest’s forbearance petition from ARMIS and 492A reporting requirements because neither Section 251(c) nor 271 are affected by this request. Furthermore, the Commission has already determined that the requirements of these two sections of the Act have been “fully implemented.”⁶²

⁶¹ 47 U.S.C. § 160(d).

⁶² See *In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21503 ¶ 15 (2005). Also see,

VI. CONCLUSION

As demonstrated in the foregoing sections of this petition, the Commission should find that the three statutory criteria that Congress established for forbearance in Section 10 of the Act have been satisfied and that it is not necessary to apply the aforementioned ARMIS and 492A reporting requirements to Qwest. Accordingly, Qwest requests that the Commission grant this petition at the earliest possible date.

Respectfully submitted,

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September 13, 2007

CERTIFICATE OF SERVICE

I, Joan O'Donnell, do hereby certify that I have caused the foregoing **PETITION FOR FORBEARANCE** of Qwest Corporation to be filed with the Office of the Secretary of the FCC (original and four copies plus one for stamp and return).


Joan O'Donnell

September 13, 2007