

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of: )

Petition of Qwest Corporation for Forbearance )  
Pursuant to 47 U.S.C. § 160(c ) in the Denver, )  
Minneapolis-St. Paul, Phoenix and Seattle )  
Metropolitan Statistical Areas )

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WC Docket No. 07-97

**REPLY COMMENTS OF T-MOBILE USA, INC.**

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**I. INTRODUCTION AND SUMMARY.**

T-Mobile USA Inc. (“T-Mobile”)<sup>1</sup> agrees with numerous commenters in the above-captioned proceeding that the Commission should dismiss or deny the petitions of the Qwest Corporation (“Qwest”) for forbearance from regulation (collectively the “Qwest Petitions” or “Petitions”) in four metropolitan statistical areas (“MSAs”)<sup>2</sup> as they apply to Qwest’s special access telecommunications services.

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<sup>1</sup> T-Mobile is one of the major national wireless carriers in the United States, with licenses covering 46 of the top 50 U.S. markets and serving over 25 million customers with a network reaching over 275 million people (including roaming and other agreements).

<sup>2</sup> See FCC Public Notice, *Pleading Cycle Established For Comments On Qwest’s Petitions For Forbearance In The Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, 22 FCC Rcd 10126 (WCB 2007); and FCC Public Notice, *Wireline Competition Bureau Grants Extension Of Time To File Comments On Qwest’s Petitions For Forbearance In Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, 22 FCC Rcd 11964 (WCB 2007), regarding the four forbearance petitions filed by Qwest, one for each of the affected MSAs. Because the four Qwest Petitions make substantially similar requests for each MSA, for convenience this reply refers to the petition for the Seattle MSA (“Qwest Seattle Petition”), but the arguments herein are applicable to all four petitions. All comments filed on or about August 31, 2007 regarding the Qwest Petitions will hereinafter be short cited.

T-Mobile is one of the few remaining independent national wireless carriers in the United States, with a rapidly growing base of mass market and enterprise customers. T-Mobile has a substantial interest in this proceeding because it is a wholesale customer of Qwest's special access services in the Qwest regions, including the MSAs at issue. T-Mobile also is poised to become an important competitor in the emerging "intermodal" marketplace for local exchange services, of which Qwest is the dominant provider in the affected MSAs. In Qwest's service areas, including the MSAs at issue here, T-Mobile relies predominantly on Qwest for high-capacity special access services as the links needed for T-Mobile's network from its cellular base stations to its mobile switching centers. In particular, T-Mobile relies overwhelmingly on Qwest's DS1 special access offerings for the initial links that connect T-Mobile's cell sites to the wireline network. T-Mobile and other competitive communications service providers have few or no realistic alternatives to the use of these services in the affected MSAs.<sup>3</sup> Accordingly, T-Mobile urges the Commission refrain from granting Qwest's requested relief with respect to special access services.

## **II. THE COMMISSION SHOULD NOT FORBEAR FROM REGULATING QWEST'S SPECIAL ACCESS SERVICES IN THE MSAs AT ISSUE.**

### **A. Qwest Fails to Clearly Articulate a Request For Forbearance For Its Special Access Services.**

Because Qwest does not make a clear argument for regulatory forbearance for its special access services, the Commission should not grant any such relief. Qwest's forbearance requests are broad and vague, and the Commission should dismiss or deny those requests that lack specificity, as is the case for special access services here.<sup>4</sup>

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<sup>3</sup> See, e.g., BT Americas Comments at 8-11.

<sup>4</sup> See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415, 19424-25 (2005) ("Omaha

In the Petitions, Qwest asks the Commission to forbear from applying a wide variety of regulations: loop and transport unbundling regulations pursuant to 47 U.S.C. §§ 251(c) and 271(c)(2)(B)(ii); “mass market” and “enterprise services,” dominant carrier tariff requirements set forth in Part 61 of the Commission's rules; price cap regulations set forth in Part 61 of the Commission's rules; *Computer III* requirements including CEI and ONA requirements; and dominant carrier requirements arising under Section 214 of the Act and Part 63 of the Commission's rules concerning the process for acquiring lines, discontinuing services, and making assignments or transfers of control.<sup>5</sup>

Based on these broad requests, Qwest’s petition could be construed as seeking forbearance from special access regulations, but the filing is far from clear. Section II.B of the Qwest Seattle Petition generally argues that enterprise customers in Seattle have access to a wide range of competitive alternatives. The focus of this section, however, is CLEC utilization of certain Qwest resale or wholesale services in order to compete with Qwest.<sup>6</sup> CLEC competition via special access services or CLEC-owned switches and loops is mentioned as a mere side

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*Forbearance Order*”) (“[t]o the extent Qwest seeks relief from other regulations that apply to dominant carriers, its request is denied for failing to identify specific regulations or to explain how they meet the section 10 criteria.”); *see Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd 27000, 27005-06 (2002) (“*ILEC Order*”) (“In addition to seeking forbearance from tariffing requirements, SBC requests that we declare it non-dominant in its provision of advanced services. SBC's petition, however, fails to request any specific forbearance relief, other than relief from tariffing regulation.”) (citations omitted).

<sup>5</sup> *See, e.g.*, Qwest Seattle Petition at 3-4. In passing, Qwest explains that its competitors in the Seattle MSA “are competing extensively using Special Access obtained from Qwest.” *Id.* at 22-24.

<sup>6</sup> *See id.* at 22-23.

note.<sup>7</sup> The only specific request for forbearance concerns Qwest's Section 251(c)(3) unbundling obligations, not its special access pricing.<sup>8</sup> Qwest appears to ask the Commission to grant the same relief from unbundling obligations as was granted in the *Omaha Forbearance Order*.<sup>9</sup> Qwest does not, however, expressly ask for forbearance from regulation of special access, and indeed the Commission specifically declined to forbear from regulating enterprise services, including special access, in the *Omaha Forbearance Order*.<sup>10</sup> Given the absence of a clear request for forbearance from special access regulation, and given Qwest's reliance on an order that specifically declined to forbear from special access regulation, the Commission cannot infer that Qwest has asked for special access forbearance and should not grant any such relief.

Moreover, although Qwest makes a few general references to special access in discussing the alleged presence of competition in the affected MSAs,<sup>11</sup> it concentrates on *switched* access, not special access, throughout Section III and the concluding section of the Qwest Seattle Petition. Section III asks the Commission to forbear from imposing unbundling obligations on Qwest in the Seattle MSA and to eliminate "dominant carrier regulations that apply to interstate

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<sup>7</sup> See *id.* at 23.

<sup>8</sup> *Id.* at 23-24.

<sup>9</sup> See *id.* at 23-24. See also *Omaha Forbearance Order*, 20 FCC Rcd at 19424-25. In seeking forbearance from unbundling obligations in the Seattle MSA, Qwest cites the Commission's consideration of evidence in the *Omaha Forbearance Order* that a number of carriers had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest in its conclusion that Section 251(c)(3) unbundling obligations were no longer necessary in the Omaha MSA.

<sup>10</sup> See Qwest Seattle Petition at 23-24, citing *Omaha Forbearance Order*, 20 FCC Rcd at 19449-50.

<sup>11</sup> See Qwest Seattle Petition at 23-24.

*switched* access services.”<sup>12</sup> Similarly, in its conclusion section, Qwest “requests that in the Seattle MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of *switched* access services and CEI/ONA requirements.”<sup>13</sup> Qwest made specific requests for forbearance from a list of regulatory obligations, yet does not mention special access services in that list.

Qwest adds to the ambiguity of its forbearance requests by citing various sections of Part 61 that focus on switched access.<sup>14</sup> Although isolated subsections of some of these provisions mention special access services, these isolated mentions do not justify forbearance from special access regulations.<sup>15</sup> Indeed, the Commission is not obligated to “comb through its rules to infer which other regulations are encompassed by [a party’s] general request.”<sup>16</sup> Given that Qwest has not specifically asked for forbearance from existing special access regulations, there is no reason for the Commission to grant any such relief. T-Mobile urges the Commission, consistent with its

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<sup>12</sup> *Id.* at 29 (emphasis added).

<sup>13</sup> *Id.* at 31 (emphasis added).

<sup>14</sup> *Id.* at 3, n.7 (seeking forbearance from price cap regulations set forth at 47 C.F.R. §§ 61.41-61.49).

<sup>15</sup> *See Omaha Forbearance Order*, 20 FCC Rcd at 19424-5 (“[t]o the extent Qwest seeks relief from other regulations that apply to dominant carriers, its request is denied for failing to identify specific regulations or to explain how they meet the section 10 criteria.”); *see ILEC Order*, 17 FCC Rcd at 27005-06 (“In addition to seeking forbearance from tariffing requirements, SBC requests that we declare it non-dominant in its provision of advanced services. SBC’s petition, however, fails to request any specific forbearance relief, other than relief from tariffing regulation.”) (citations omitted).

<sup>16</sup> *Omaha Forbearance Order*, 17 FCC Rcd at 19425 n.51.

precedent in the *Omaha Forbearance Order*, to rule definitively that the Qwest Petitions do not extend to special access services.<sup>17</sup>

**B. If The Commission Were To Find That Qwest Is Requesting Regulatory Forbearance From Special Access Regulations, the Commission Should Deny Any Such Request.**

Even if the Commission were to find that Qwest seeks forbearance from special access regulations, Qwest's Petitions fail the three-pronged forbearance test of Section 10(a) of the Communications Act of 1934, as amended (the "Act").<sup>18</sup> Contrary to Qwest's claims,<sup>19</sup> the special access marketplace is not competitive, and forbearance would remove the few safeguards remaining in place to promote competition and protect consumer welfare.<sup>20</sup> Rather, those safeguards should be strengthened to protect consumers and the public interest from the ever decreasing competition in the special access marketplace. In this regard, the Government Accountability Office found in 2006 that special access customers -- like T-Mobile and other independent wireless carriers -- have very few facilities-based alternatives for special access, and that ILEC prices for such services have increased since 2001.<sup>21</sup> Based on calculations of its

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<sup>17</sup> *Id.* at 19424-25, 19470-71.

<sup>18</sup> Under the statute, the requesting party must show 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)(1)-(3).

<sup>19</sup> See Qwest Seattle Petition at 5-27.

<sup>20</sup> See T-Mobile Special Access Comments at 8-9, WC Docket No. 05-25 (Aug. 8, 2007) ("T-Mobile Special Access Comments"); *see also* COMPTTEL Opposition at 41.

<sup>21</sup> See U.S. Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *Telecommunications: FCC Needs to Improve*

special access costs between 2002 and 2006, T-Mobile found that prices charged by Qwest rose by approximately 62% during that time.<sup>22</sup> BT Americas also points out that Qwest’s special access rates, particularly in Phoenix and Seattle, are substantially above cost.<sup>23</sup> Similarly, COMPTTEL notes that Qwest’s triple-digit (132%) average rate of return on its special access circuits in 2006 indicates a lack of competitive pressure on Qwest’s special access offerings.<sup>24</sup>

T-Mobile and other independent wireless providers rely on Qwest for inputs to their wireless services – including services that compete with Qwest’s wireline offerings in the affected MSAs, and Qwest has strong incentives to raise the price and degrade the quality of those inputs. T-Mobile and other Qwest competitors have few or no realistic alternatives to the use of those inputs.<sup>25</sup> Because the special access marketplace is not competitive in the four affected MSAs, continued regulation of Qwest’s special access services is necessary. Moreover, discussed below, the Qwest Petitions do not satisfy the forbearance criteria of Section 10(a) of the Act.

**1. Improved Regulation is Necessary to Ensure Qwest’s Special Access Rates and Practices in the Affected MSAs are Just and Reasonable.**

Under the first prong of the Section 10(a) forbearance test, forbearance from special access regulations would only be justified if the regulation is unnecessary to ensure that Qwest’s

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*its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO 07-80 (Nov. 2006) (“GAO Report”).

<sup>22</sup> See Declaration of Dave Mayo, ¶ 9 (Aug. 9, 2007), Attachment A to T-Mobile Special Access Reply Comments, WC Docket 05-25 (filed Aug. 15, 2007) (“T-Mobile Special Access Reply Comments”).

<sup>23</sup> BT Americas Comments at 12.

<sup>24</sup> COMPTTEL Opposition at 24.

<sup>25</sup> See, e.g., BT Americas Comments at 8-11.

rates, services, and practices will be just and reasonable and not unjustly or unreasonably discriminatory.<sup>26</sup> However, current regulations are inadequate to preserve just and reasonable rates and practices. The record demonstrates that Qwest's special access rates in the four affected MSAs currently are set at excessive levels<sup>27</sup> and have the potential to increase if the Commission further relaxes its regulatory oversight of special access pricing, through forbearance or otherwise. As the record shows, Qwest's current high special access rates have clear negative effects on competition.<sup>28</sup> Moreover, in the absence of effective special access regulation, Qwest can engage in unreasonable discriminatory tactics to stifle competitive entry.<sup>29</sup> Special access safeguards should be improved, not removed, to curtail and prevent unjust and unreasonable charges and practices.

## **2. Improved Regulation of Special Access in the Affected MSAs is Necessary to Protect Consumers.**

Forbearance from special access regulation is not justified under Section 10(a)(2) of the Act because such forbearance would harm consumers.<sup>30</sup> As T-Mobile has explained in other

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<sup>26</sup> 47 U.S.C. § 160(a)(1).

<sup>27</sup> *See, e.g.*, BT Americas Comments at 12.

<sup>28</sup> *See, e.g.*, COMPTTEL Opposition at 28 (explaining that Qwest's supra-competitive special access rates have made it uneconomical for McLeodUSA to remain in the Omaha, Nebraska market, possibly necessitating McLeod departing the market unless the Commission reinstates Qwest's Section 251(c)(3) unbundling obligations).

<sup>29</sup> For example, as the New Jersey Division of Ratepayer Advocate (NJDRP) explained in 2005, Qwest has provided volume discounts to customers that maintain 90% of their historical levels of DS1 and DS3 lines. The commitment to purchase these lines would increase each year to reflect 90% of existing in-service lines for the prior year. For a customer to continue to receive these volume discounts when its number of in-service lines falls below 90% of historical levels, the customer was required to pay for all remaining lines of the commitment. *See* Reply Comments of the New Jersey Division of the Ratepayer Advocate, at Table 2, WC Docket No. 05-25 (July 29, 2005).

<sup>30</sup> 47 U.S.C. § 160(a)(2).

proceedings, robust special access oversight will promote wireless and intermodal competition to the benefit of consumers.<sup>31</sup>

By stifling competition, special access forbearance would harm consumers in the four affected MSAs. T-Mobile seeks to compete and provide seamless wireless coverage throughout entire MSAs to serve consumers, but, as T-Mobile has explained previously, the presence of limited competition in urban portions of an MSA does not reflect the severe lack of competition in more remote rural portions of that MSA where many of T-Mobile's cell sites may be located.<sup>32</sup> The Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs cover large geographic areas that include relatively lightly populated areas where competitive providers of special access services do not exist. The *GAO Report* examined three of the four MSAs at issue here and found little or no competition -- only 5.7% of buildings in the Minneapolis St. Paul MSA had competitive special access alternatives; that percentage drops to 3.7% for the Phoenix MSA and 3.8% in the Seattle MSA.<sup>33</sup> Moreover, because cellular base stations frequently cannot be located in large telecom-intensive buildings, this miniscule amount of competition overstates the availability of competitive special access alternatives available to wireless providers such as T-Mobile.<sup>34</sup> Special access deregulation over broad geographic areas like the Qwest MSAs,

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<sup>31</sup> See T-Mobile Special Access Comments at 2, 8; Reply Comments of T-Mobile at 18-22, WC Docket No. 05-25 (July 29, 2005).

<sup>32</sup> See T-Mobile Special Access Comments at 10.

<sup>33</sup> See BT Americas Comments at 2, *citing GAO Report* at Table 2. The *GAO Report* did not analyze the Denver MSA.

<sup>34</sup> T-Mobile Special Access Comments at 8.

coupled with the lack of competition for these services, is particularly harmful to consumers who are deprived of the low prices and increased choice for services that competition brings.<sup>35</sup>

### **3. Improved Regulation of Special Access Services in the Affected MSAs Furthers the Public Interest.**

Forbearance from the pricing flexibility rules and price cap regulations of special access services would be contrary to the public interest because it would hinder deployment of advanced wireless broadband services.<sup>36</sup> Companies like T-Mobile are and will continue to be forced to spend limited resources on excessively high-priced special access services rather than investing in wireless broadband and broader rural coverage.<sup>37</sup> As T-Mobile seeks to expand its network and begins to deploy its broadband UMTS and 4G services, its need for special access backhaul services will continue to increase; thus, regulation curtailing excessive special access rates will further the public interest by fostering deployment of the next generation of services to consumers.<sup>38</sup>

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<sup>35</sup> Letter from Thomas J. Sugrue, Vice President of Government Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 06-125, 06-147 and 05-25 at 1 (Aug. 30, 2007) (explaining that special access services are critical inputs for T-Mobile's broadband services, in particular, its UMTS deployment, and that consumers and the public interest suffer when unregulated special access prices cause stifled broadband deployment) ("*August 30 Special Access Ex Parte Notice*").

<sup>36</sup> See 47 U.S.C. §160(a)(3).

<sup>37</sup> T-Mobile Special Access Comments at 8. See also BT Americas Comments at 14.

<sup>38</sup> *August 30 Special Access Ex Parte Notice* at 1 and *ILEC Forbearance Petitions and Special Access* at 3 (Aug. 29, 2007), attached to *August 30 Special Access Ex Parte Notice*.

**C. The Forbearance Granted in the Anchorage MSA is Not a Proper Template for the Commission’s Decision on the Qwest Petitions.**

The Commission’s decision on the ACS of Anchorage, Inc. (“ACS”) forbearance request is not the proper model for handling the Qwest’s Petitions.<sup>39</sup> T-Mobile agrees that forbearance analysis should focus on smaller, local markets in determining the appropriate level of special access regulation. However, the Anchorage MSA is unique: it features facilities-based competition due to the presence of two incumbent carriers, and its remote geography “contributes to the special characteristics of that market that are not duplicated in any other market in the country.”<sup>40</sup> Moreover, the relief granted to ACS, a rate-of-return carrier, also depended on continued tariff regulation of TDM-based DS1 and DS3 special access services.<sup>41</sup> In contrast, Qwest, a price cap carrier, enjoys broad Phase II pricing flexibility in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs.<sup>42</sup> Therefore, Qwest’s special access services in the affected MSAs are not subject to the discipline of rate-of-return regulation as is the case for ACS in Anchorage. In addition, no other incumbent competes with Qwest in the affected MSAs. Accordingly, the ACS model is an inappropriate basis for granting the present Qwest Petitions.

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<sup>39</sup> *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, FCC 07-149 (Aug. 20, 2007) (“ACS Order”).

<sup>40</sup> See Separate Statement of Commission Robert McDowell to the ACS Order.

<sup>41</sup> ACS Order ¶ 101 & n.279. The Commission’s special access pricing flexibility regime applies only to price cap carriers, not rate-of-return carriers like ACS.

<sup>42</sup> *Qwest Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, 17 FCC Rcd 7363, 7366-67 n.24 (WCB 2002).

**D. The Commission Should Resolve the Special Access Rulemaking to Strengthen, Not Reduce or Eliminate, Oversight of Special Access Services.**

T-Mobile urges the Commission to evaluate the refreshed record in the special access rulemaking proceeding, and in the interim, refrain from further deregulation of special access.<sup>43</sup>

The record in the special access rulemaking proceeding demonstrates that special access rates are at supra-competitive levels due to ILEC market power.<sup>44</sup> Rather than grant unwarranted forbearance requests for Qwest's special access services to the detriment of consumers and competitors, the Commission should instead address systemic special access issues in the pending rulemaking proceeding. Specifically, as T-Mobile has urged in prior comments and ex parte letters,<sup>45</sup> the Commission should reform the pricing flexibility and price cap regimes as follows:

- Reduce the geographic areas to which pricing flexibility applies from entire MSAs to wire centers or pairs of wire centers, which would result in a more tailored and granular analysis to better assess the true state of competition;
- Narrow the product market and separately apply pricing flexibility triggers to: (1) customer premises-to-central office links (channel terminations), (2) interoffice transport links (channel mileage), and (3) other forms of special access, including links between ILEC wire centers and mobile switching centers ("MSCs") and ILEC OCn services;
- Adopt more stringent triggers for pricing flexibility in these newly defined markets. One possibility for new triggers would be the triggers for unbundled network elements ("UNEs") that are functionally equivalent to special access services, i.e., high-capacity loops and transport. These triggers would be both more granular and more current than the existing triggers;
- Bar price cap ILECs from all forms of anticompetitive and exclusionary behavior regarding the terms and conditions of their special access services;

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<sup>43</sup> FCC Public Notice, *Parties Asked to Refresh Record in Special Access Notice of Proposed Rulemaking*, 22 FCC Rcd 13352 (WCB 2007).

<sup>44</sup> T-Mobile Special Access Comments at 3-6; EarthLink Opposition at 44; Comments of Sprint Nextel, WC Docket No. 05-25, at 10-11 (Aug. 8, 2007).

<sup>45</sup> See, e.g., T-Mobile Special Access Reply Comments at 5-6; *August 30 Special Access Ex Parte Notice*.

- Apply any new pricing flexibility rules to all areas and services, including those for which the price cap ILECs have obtained pricing flexibility under existing rules; and
- Reform the price cap regime to account for both firm-wide productivity growth as well as increases in scale economies for special access services through mechanisms such as a productivity factor.

### III. CONCLUSION.

T-Mobile urges the Commission not to grant forbearance from regulation of Qwest special access services in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle MSAs. Qwest does not specifically request forbearance for special access services in these MSAs, and the Commission should not construe Qwest's vague petitions to include special access services. The special access marketplace is not competitive, and special access prices remain at supra-competitive levels, resulting in unreasonably high priced inputs for T-Mobile's wireless services and less capital available to invest in next-generation wireless broadband networks. The Qwest Petitions do not satisfy the three forbearance criteria of the Act with respect to special access. Rather than grant unwarranted, piecemeal forbearance to Qwest or other ILECs, the Commission should resolve the pending special access rulemaking to improve special access regulation in these MSAs and throughout the United States.

Respectfully submitted,

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