

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petitions of Qwest Corporation for	)	WC Docket No. 07-97
Forbearance Pursuant to 47 U.S.C. § 160(c)	)	
In the Denver, Minneapolis-St. Paul,	)	
Phoenix and Seattle Metropolitan Statistical	)	
Areas	)	

**SPRINT NEXTEL CORPORATION'S REPLY COMMENTS TO QWEST  
CORPORATION'S PETITIONS FOR FORBEARANCE**

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Sprint Nextel Corporation (“Sprint Nextel”) hereby respectfully submits its Reply Comments to the above-captioned petitions of Qwest Corporation (“Qwest”) seeking forbearance from enforcement of a host of statutory obligations and Federal Communications Commission (“Commission”) regulations in the Denver, Colorado; Minneapolis-St. Paul, Minnesota; Phoenix, Arizona and Seattle, Washington Metropolitan Statistical Areas (“MSAs”). Sprint Nextel joins with the numerous other parties filing initial comments in this proceeding opposing Qwest’s forbearance requests in these four MSAs. It urges the Commission to deny the petitions because Qwest has failed to present sufficient evidence to satisfy each element of the statutory forbearance criteria enumerated in 47 U.S.C. § 160(a).

## **I. INTRODUCTION AND SUMMARY**

On April 27, 2007 Qwest filed four virtually identical petitions asking the Commission to forbear from enforcing the loop and transport unbundling requirements of section 251(c), the dominant carrier regulations under Title II of the Act, and the *Computer Inquiry* rules applicable to Qwest's incumbent local exchange operations for mass market, enterprise and wholesale services in these four MSAs.<sup>1</sup>

In support of these petitions, Qwest claims that it faces competition throughout all four markets from a wide range of technologies and a broad array of service providers, including wireline, wireless, cable and VoIP providers.<sup>2</sup> Qwest also asserts that its loss of retail mass market and enterprise lines coupled with what it terms its "connection" share of the retail mass market and "revenue" share of the enterprise market demonstrate the extent of the competition it faces in these markets.<sup>3</sup>

Nineteen parties filed initial comments addressing Qwest's Petitions. No party voiced unequivocal support of the petitions and the overwhelming majority of the comments vehemently opposed Qwest's forbearance requests. The opposing parties include a wide variety of stakeholders representing the interests of state governments, consumers, corporate users, small business owners and various service providers. Specifically, the parties opposing the petitions on various grounds include state public utility commissions (the Arizona Corporation Commission, the Colorado Public Utilities Commission and the Washington Utilities and Transportation Commission), state

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<sup>1</sup> 47 U.S.C. § 251(c); 47 C.F.R. §§ 61.38, 61.41-61.49, 65.1-65.830.

<sup>2</sup> Denver, Minneapolis, Phoenix and Seattle Petitions at 1.

<sup>3</sup> Denver Petition at 18 and 27; Minneapolis Petition at 19 and 28; Phoenix Petition at 18 and 28; and Seattle Petition at 19 and 27.

consumer protection agencies (the Colorado Office of Consumer Counsel and the Colorado Attorney General's Office, the New Jersey Division of Rate Counsel, the Washington State Attorney General's Office, and the National Association of State Utility Consumer Advocates ("NASUCA")), an organization representing large corporate telecommunications users (Ad Hoc Telecommunications Users Committee), an organization representing small business owners (the Washington State Independent Business Association<sup>4</sup>), numerous competitive telecommunications providers (several competitive local exchange carriers ("CLECs")<sup>5</sup> and cable providers (Cox Communications, Inc. and Comcast Corporation), and a coalition of Voice over Internet Protocol ("VoIP) providers (the Voice on the Net ("VON") coalition).

Sprint Nextel's Reply Comments support the initial comments filed in opposition to Qwest's forbearance petitions and endorse the view that Qwest has failed to carry its burden to justify forbearance from these critical statutory obligations and Commission regulations throughout the entire footprint of these four heavily populated MSAs.<sup>6</sup> Qwest

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<sup>4</sup> Ann P. Bowling, a small business owner in Washington State, also filed individual comments opposing Qwest's Seattle Petition as harmful to consumers.

<sup>5</sup> Covad, NuVox and XO Communications filed joint comments opposing Qwest's Petitions. Time Warner Telecom, Inc., Cbeyond, Inc., and Eschelon Telecom, Inc. filed a joint opposition to Qwest's forbearance request with respect to its loop and transport unbundling obligations. Earthlink, Inc. and its CLEC affiliate, New Edge Network, Inc., filed joint comments in opposition. Affinity Telecom, Inc., Cavalier Telephone, LLC, CP Telecom, Inc., Global Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Integra, Telecom, Inc. and TDS Metrocom, LLC (hereinafter referred to as "Affinity Comments") filed comments in opposition. BT Americas Inc. also filed comments on behalf of itself and other BT entities. Finally, CompTel filed comments opposing the petitions and urging denial.

<sup>6</sup> Qwest's four petitions impact 13 million Americans in over four and a half million households and cover an enormous geographic area covering large territories of four western states. Comments of Earthlink and New Edge Networks at 2.

has failed to satisfy any of the statutory criteria for granting forbearance. Furthermore, Qwest has failed to provide evidence to show that it faces competition in the specific geographic and product markets at issue. Qwest's petition is overbroad, as it seeks forbearance in all areas, not just in those areas where it supposedly faces competition. In fact, Qwest has failed to demonstrate that it no longer is dominant throughout the MSAs at issue in this proceeding. Qwest merely provides generic evidence of the competition it faces at the retail level, yet ignores the fact that it seeks forbearance from the wholesale services it provides to the very retail providers on which it relies as evidence of competition.

Sprint Nextel has previously urged the Commission to establish some discipline over the forbearance process. Once again, the Commission is faced with a petition that is poorly supported yet brimming with expectation that the Commission will grant sweeping forbearance from statutory requirements that are critical to ensuring that consumers continue to reap the benefits of a competitive environment. The statutory and regulatory safeguards from which Qwest seeks to be exempted pave the way for deployment of broadband and other new and innovative services. The Commission must deny Qwest's petition to ensure that Qwest cannot exploit its power to deny consumers the benefits of these competitive services.

## **II. THE COMMISSION SHOULD DENY QWEST'S PETITIONS BECAUSE IT FAILED TO PROVIDE EVIDENCE SUFFICIENT TO JUSTIFY FORBEARANCE**

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The common theme central to the initial comments filed in this proceeding concerns Qwest's failure to provide sufficiently detailed and market-specific evidence of the supposed competition it is facing throughout the four MSAs for which it seeks such

sweeping forbearance.<sup>7</sup> For example, several parties commented that the Qwest petitions fail to present granular levels of data, including wire-center specific information, to demonstrate that significant actual facilities-based competition exists for each relevant product market within each relevant geographic market.<sup>8</sup> Instead, Qwest presents generic national-, state- and MSA-level data, anecdotal information, and competitors' promotional materials that appear primarily intended to show that it has lost retail market share to various intra-modal and inter-modal competitors.<sup>9</sup> The initial commenters have persuasively documented the numerous flaws and deficiencies that pervade Qwest's "evidence" in support of its forbearance requests.

#### **A. The Petitions Must Be Denied as to Qwest's Section 251(c) Obligations**

Every party filing initial comments agreed that Qwest failed to sufficiently demonstrate that it should be relieved of its section 251(c) loop and transport obligations.<sup>10</sup> Qwest's petitions refer generally to the competition it allegedly faces at the retail level from various mass market retail providers; however, as the commenting parties rightly point out, none of the market share gains made by these mass market retail competitors establish that Qwest is no longer the dominant provider in the wholesale

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<sup>7</sup> CompTel Comments at 34-39; Ad Hoc Users Comments at 5-10; Earthlink and New Edge Network Opposition at 47-48; Cox Comments at 9-20; Comments of the Washington Utilities and Transportation Commission at 8-9; Comments of Covad, NuVox, and XO at 2, 10-12, 16-52.

<sup>8</sup> Covad, NuVox and XO Comments at 2; Affinity Comments at 7-9, 15; CompTel Comments at 31-33.

<sup>9</sup> Cox Comments at 4; Affinity Comments at 7-9.

<sup>10</sup> *See, generally*, the Comments of the CLEC parties, WUTC, NASUCA.

market covering these four MSAs.<sup>11</sup> Qwest has not shown that competitive service providers have any meaningful alternatives to Qwest's facilities and continued access to the unbundled network elements ("UNEs") of loops, subloops, and transport remain critical inputs enabling carriers to compete at the vast majority of wire centers included in the MSAs at issue in this proceeding. Thus, any competitors' gains in the retail market have little significance as long as these competitors remain dependent on Qwest for facilities, services, interconnection and collocation to provision their services.<sup>12</sup>

The commenting parties also have amply demonstrated that this unquestionably remains the prevailing state of the market in these four MSAs.<sup>13</sup> Qwest has not demonstrated that it faces facilities-based competition throughout all parts of these MSAs and certainly not at the threshold required for forbearance, which the FCC has determined in previous forbearance decisions relating to the Omaha and Anchorage MSAs to be 75% coverage by an independent facilities-based provider in specified wire centers.<sup>14</sup>

Moreover, as parties such as the Ad Hoc Telecommunications Users and the Washington Transportation and Utilities Commission point out, the tenuous state of retail

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<sup>11</sup> Ad Hoc Comments at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, Cox Comments at 10-20; Covad, NuVox and XO Comments at 24-52.

<sup>14</sup> Affinity Comments at 13, 16-17, 42; Cox Communications at 4-5; *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha MSA*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19444 (2005), (hereinafter "*Qwest Omaha Order*"), *aff'd Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 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*, WC Docket No. 05-281, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1971-72, FCC 06-188 (released January 30, 2007) (hereinafter "*Anchorage Order*").

competition that currently does exist in these four MSAs will cease to be sustainable if the Commission forbears from regulating the very wholesale services upon which that retail competition depends.<sup>15</sup>

The commenting parties have also shown that carriers and customers continue to have limited competitive alternatives to Qwest's enterprise and wholesale services, including special access, and that Qwest has failed to present evidence of adequate facilities-based competition for enterprise services.<sup>16</sup> While Qwest touts the presence of cable providers such as Cox and Comcast in its service territory, cable telephony is still mainly a competitive alternative for residential customers and is not yet a viable option for wholesale and enterprise customers, due in part to a lack of ubiquitous network coverage to accommodate the needs of those customers.<sup>17</sup> Indeed, Comcast confirms in its initial comments that it has not to date made any significant or sustained entry into the business and enterprise markets.<sup>18</sup> Similarly, wireless service is not yet a sufficient competitive alternative to Qwest for enterprise customer needs. And VoIP service is not truly an alternative access technology since it is wholly dependent on either fiber or cable to the home or business.<sup>19</sup> Along those lines, the comments of the Voice on the Net

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<sup>15</sup> *Id.* at 5-6; WUTC Comments at 5-7.

<sup>16</sup> Comments of BT Americas Inc. at 2; Ad Hoc Comments at 6, 10.

<sup>17</sup> Comments of BT Americas at 2.

<sup>18</sup> Comments of Comcast Corporation at 6.

<sup>19</sup> Comments of BT Americas at 11; Comments of the Voice on the Net ("VON") Coalition at 2-3, 5.

(“VON”) Coalition cautioned the Commission against factoring competition from over-the-top VoIP providers into its forbearance analysis.<sup>20</sup>

Given the extensive information presented in the initial comments documenting the continued control that Qwest exerts over the enterprise, wholesale and special access markets, the Commission cannot conclude that Qwest should be relieved of its obligations to unbundle its loops and transport facilities.

### **B. The Petitions Must Be Denied as to Qwest’s Title II and *Computer Inquiry* Obligations**

Qwest’s Petitions seek far-reaching exemptions from its Title II and *Computer Inquiry* obligations. In particular, Qwest seeks exemption from dominant carrier tariffing obligations<sup>21</sup> and price cap rules under Part 61 of the FCC’s rules.<sup>22</sup> It seeks exemption from all section 214 procedures and Part 63 rules applicable to dominant carriers,<sup>23</sup> as well as exemption from all *Computer III Inquiry* requirements, including the Comparably Efficient Interconnection (“CEI”) and Open Network Architecture (“ONA”) rules intended to preclude network discrimination against facilities-based competitors.<sup>24</sup>

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<sup>20</sup> Comments of the VON Coalition at 2-3.

<sup>21</sup> 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59.

<sup>22</sup> 47 C.F.R. §§ 61.41-61.49.

<sup>23</sup> 47 U.S.C. § 214; 47 C.F.R. §§ 63.03, 63.04, 63.60-63.66.

<sup>24</sup> *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986); *Application of ONA and Nondiscrimination Safeguards to GTE Corp.*, CC Docket No. 92-256, Report and Order, 9 FCC Rcd 4922 (1994). The *Computer Inquiry* rules require dominant carriers to (i) offer as telecommunications services the basic transmission services underlying their enhanced services (transmission access requirement); (ii) offer those telecommunications services on a non-discriminatory basis to all enhanced service providers, including their own enhanced services operations (nondiscrimination

The Commission has previously determined that forbearance from dominant carrier regulation is justified upon a finding that the incumbent LEC no longer has market power in the provision of the services for which it seeks forbearance.<sup>25</sup> As several commenting parties have noted, however, Qwest has failed to demonstrate that it no longer possesses market power throughout these four MSAs so that the continued enforcement of these requirements is no longer necessary.<sup>26</sup> In particular, as Covad, NuVox and XO pointed out, Qwest failed to present any market-specific data that could be used to analyze its market share and otherwise assess the extent of its market power, such as supply and demand elasticities and its cost, structure, size and resources.<sup>27</sup> Without such a showing, the observation that the Washington Utilities and Transportation Commission made in its comments is especially apt: “[e]liminating the obligation to comply with Part 61 [dominant carrier tariff] regulations would result in a lack of controls over the pricing of interstate special access services on which Qwest’s competitors in the Seattle MSA rely. Further, it would mean that Qwest could deaverage or assess higher special access prices to its wholesale competitors compared to those charged to end users.”<sup>28</sup>

Similarly, Sprint Nextel also concurs with several parties’ comments that Qwest barely addressed – much less provided sufficient evidence demonstrating -- how it satisfied the conditions necessary to justify forbearance from the *Computer Inquiry*

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requirement); and (iii) offer those telecommunications services pursuant to tariff (tariffing requirement).

<sup>25</sup> *Omaha Forbearance Order* at ¶ 22.

<sup>26</sup> Covad, NuVox and XO Comments at 52-54.

<sup>27</sup> *Id.*

<sup>28</sup> WUTC Comments at 10.

requirements.<sup>29</sup> Accordingly, the Commission should deny Qwest's forbearance request for having failed to satisfy the statutory forbearance criteria.

### **C. Qwest's Petitions Must be Denied as Overbroad in the Relief it Seeks**

Qwest claims that it merely seeks the same regulatory relief that the Commission previously granted to it in the Omaha MSA. Qwest, however, has disregarded the very significant limitations the Commission placed on its grant of forbearance in the *Qwest Omaha Order*<sup>30</sup> and seeks far more extensive statutory and regulatory exemptions with these four petitions.<sup>31</sup>

Qwest does not limit its forbearance requests to those portions of the MSAs where facilities-based competition is supposedly firmly established. On the contrary, it seeks exemption throughout the entire four MSAs with no level of particularity and fails to include a wire center-by-wire center analysis. As Cox pointed out, the Commission has previously found that MSA-level data is not granular enough to sustain a forbearance finding for section 251 and other incumbent LEC obligations.<sup>32</sup> Numerous commenters questioned the credibility of Qwest's claim that facilities-based competition exists everywhere in these MSAs so that forbearance relief from section 251(c) and dominant

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<sup>29</sup> Covad, NuVox and XO Comments at 54-55. CompTel Comments at 8-10.

<sup>30</sup> *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha MSA*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005), (hereinafter "*Qwest Omaha Order*"), *aff'd Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

<sup>31</sup> NASUCA Comments at 3.

<sup>32</sup> Cox Comments at 6-7.

carrier regulations would be justified.<sup>33</sup> And, as NASUCA notes in its comments, by asking for forbearance throughout these four MSAs, Qwest has ignored the key finding in the *Qwest Omaha Order*, which restricted the grant of forbearance to just 9 of the 24 wire centers in the Omaha MSA.<sup>34</sup> Also, by asking the Commission to evaluate its petitions in these four MSAs through the prism of the *Qwest Omaha Order*, Qwest ignores the Commission's clear instruction that it does not adopt rules of general applicability in its forbearance orders and each forbearance case must be judged on its own merits.<sup>35</sup>

In light of the deficiencies in its evidence and the overreaching of its request, the Commission should deny the Petitions.

### **III. QWEST'S PETITIONS FAIL TO SATISFY SECTION 10'S REQUIREMENTS FOR FORBEARANCE**

Sprint Nextel agrees with those parties noting that Qwest bears a heavy burden to demonstrate that it meets each element of the statutory criteria to obtain forbearance from Commission regulations and legal obligations.<sup>36</sup> Section 10(a) of the Act provides that the Commission may not grant forbearance from any Commission regulation or statutory provision until it finds that three conditions have been met. The Commission must make affirmative determinations that (1) enforcement of the Act's provisions or the Commission's regulation is not necessary to ensure that the telecommunications carrier's

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<sup>33</sup> See, e.g., Cox Comments at 9-10, 19-20; Covad, NuVox and XO Comments at 8-14; Earthlink Comments at 29-30, 47-49.

<sup>34</sup> The D.C. Circuit endorsed this approach in its decision affirming the *Qwest Omaha Order*.

<sup>35</sup> *Qwest Omaha Order* at ¶ 2.

<sup>36</sup> CompTel Comments at 3.

charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary for the protection of consumers; and (3) forbearance from applying the provision or regulation is consistent with the public interest.<sup>37</sup> Section 10(b) also requires the Commission, as part of its public interest determination, to examine whether forbearance from enforcing the provision or regulation at issue will promote competitive market conditions and enhance competition among telecommunications providers.<sup>38</sup>

The Commission must deny a petition for forbearance if it determines that any one of the three elements of the section 10(a) standard is not met.<sup>39</sup>

**A. Qwest Has Not Demonstrated That Compliance With Section 251(c), Title II, and the *Computer Inquiry* Rules Is Not Necessary to Ensure Just, Reasonable and Non-Discriminatory Charges and Practices**

The commenting parties have shown that Qwest continues to maintain its market dominance throughout these four MSAs. The competitors Qwest identified in its Petitions continue to depend on Qwest facilities to serve both their mass market and enterprise customers. CLECs continue to need access to Qwest's loop and transport network elements to provision their competitive services. Competitive interexchange carriers ("IXCs") and enterprise competitors depend on Qwest for the majority of their exchange access. Wireless carriers also depend on Qwest for special access backhaul and transport facilities. In its Petitions, Qwest fails utterly to provide any evidence that these

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<sup>37</sup> 47 U.S.C. § 160(a).

<sup>38</sup> 47 U.S.C. § 160(b).

<sup>39</sup> Comment of CompTel at 10, citing *Cellular Telecommunications & Internet Association v. Federal Communications Comm'n*, 330 F.3d 502, 509 (D.C. Cir. 2003).

carriers have alternatives other than Qwest. There simply is no competition in the underlying wholesale markets.

Clearly, forbearance may not be granted while Qwest retains its dominance in the special access market where it sets prices well above its costs. Even in the *Qwest Omaha Order*, the Commission found that Qwest remained dominant in enterprise services, such as special access high capacity loops.<sup>40</sup> Thus, it specifically denied Qwest's request for treatment as a non-dominant carrier for its enterprise services.<sup>41</sup> More recently, in the *Anchorage II* decision, the Commission denied the ILEC's, ACS of Anchorage, Inc., request for forbearance from dominant carrier regulation of its interstate special access services.<sup>42</sup> As these decisions confirm, the special access market is not competitive and the regulatory safeguards found in the unbundling requirements, Title II regulations and the *Computer Inquiry* requirements remain necessary to ensure just, reasonable and non-discriminatory pricing.

The Commission should be wary of accepting Qwest's claim that it will continue to provide access to its essential facilities to its competitors at just and reasonable terms and conditions, albeit at commercial rates, upon receiving the forbearance it seeks in this proceeding. The competitive situation that currently exists in the Omaha MSA in the aftermath of the Commission's grant of forbearance to Qwest from its loop and

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<sup>40</sup> *Qwest Omaha Order*, 20 FCC Rcd 19424, 19438 at ¶¶ 50.

<sup>41</sup> *Id.*

<sup>42</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 at ¶¶ 87, 90-91 (released August 20, 2007) ("*Anchorage II*").

unbundling obligations is particularly instructive. In fact, McLeodUSA Telecommunications Services, Inc. (“McLeod”) recently petitioned the Commission to reconsider Qwest’s forbearance relief in the Omaha MSA because of Qwest’s refusal to provision loops and transport at rates and terms that would permit McLeod to effectively compete in the market.<sup>43</sup> McLeod has indicated that because of Qwest’s excessively priced special access rates and unreasonable wholesale pricing for last mile loop facilities, it is no longer able to economically compete; therefore, it would be withdrawing from the Omaha market.<sup>44</sup> And while it is actively seeking to sell its Omaha CLEC assets, it has been unable to find a willing buyer despite its concerted efforts.<sup>45</sup> Similarly, another CLEC, Integra Telecom, Inc., has announced plans to abandon its efforts to enter the Omaha market after finding it less economically attractive to compete in the absence of section 251(c) unbundling requirements.<sup>46</sup> The Commission surely did not mean for this to be the result of its prior forbearance grant, as the ability to drive out both existing and potential competition is not good for consumers and is wholly contrary to the goals and objectives of section 10 forbearance.

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<sup>43</sup> Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223 (filed July 23, 2007). The Commission established a pleading cycle to consider McLeod’s petition calling for initial comments by August 29, 2007 and reply comments by September 13, 2007. *See also* Affinity Comments at 47-52; CompTel Comments at 18-23, 27-28.

<sup>44</sup> McLeod USA Petition for Modification in WC Docket No. 04-223 at 14-15; Affinity Comments at 47-52; CompTel Comments at 18-23.

<sup>45</sup> McLeodUSA Petition for Modification in WC Docket No. 04-223 at 18; CompTel Comments at 27-28; Earthlink Comments at 26-27.

<sup>46</sup> CompTel Comments at 28; McLeodUSA Petition at 17-18.

In light of these competitive developments in the Omaha MSA, coupled with the results of the Commission's grant of wholesale pricing flexibility for special access services, which has led to sharp increases in special access pricing,<sup>47</sup> the Commission should find that Qwest has not met the first element of the statutory forbearance standard. Clearly, the rules are necessary to ensure that rates continue to be just and reasonable and not unduly discriminatory.

**B. Qwest Has Not Demonstrated That Compliance With Section 251, Title II, And The Computer Inquiry Rules Is Not Necessary To Protect Consumers**

Sprint Nextel agrees with commenters that have shown that Qwest has failed to prove that the market-opening requirements of section 251 and the market safeguards of Title II and the Commission's *Computer Inquiry* rules are no longer needed to protect consumers. On the contrary, granting forbearance in this instance, given the lack of real facilities-based competition emerging throughout these four MSAs, would only harm consumers. It would impede new entrants and discourage competitive entry or, as may be the case in the Omaha MSA, cause competitors to exit or forego entering the market. Forbearance would only increase Qwest's market power in the enterprise and wholesale markets, and it would limit competitive choices available to consumers, thus more likely increasing their costs for communication services.

**C. Granting Forbearance in this Matter Would be Contrary to the Public Interest and Would Harm Competition**

Because Qwest dominates the special access market in these four MSAs, even its facilities-based competitors, including those intermodal competitors it references in its Petitions, must depend on Qwest's network to serve their customers. CLECs who

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<sup>47</sup> Affinity Comments at 79-80.

compete using UNE-loops depend on Qwest's facilities. Cable telephony competitors depend on Qwest's special access services to link their enhanced cable networks together and to provide their own services. Wireless carriers and competitive IXCs depend substantially on Qwest's special access services. While Qwest references potential gains made by "over-the-top" VoIP providers, to the extent such service providers may eventually gain a significant place in the market, they will also likely depend on Qwest facilities, either directly or indirectly, to provide their services. There are simply no adequate wholesale alternatives to Qwest at this time. Forbearance would adversely affect the prospect of any meaningful competition developing in the enterprise and wholesale services market. Granting Qwest's forbearance petitions for these four MSAs would reduce competition, decrease innovation and quality of service, and increase cost for consumers. Accordingly, a grant of forbearance under these circumstances would be contrary to the public interest.

#### **IV. CONCLUSION**

The Commission must deny Qwest's Petitions for forbearance in the Denver, Minneapolis-St. Paul, Phoenix and Seattle MSAs because it fails to provide adequate evidence that forbearance would be consistent with the statutory forbearance standard.<sup>48</sup> By ignoring the state of the market for the services for which Qwest seeks forbearance, Qwest has failed to satisfy each element of the forbearance standard. Facilities-based competition is not yet sufficient to warrant the removal of these regulatory safeguards. The Commission cannot, based on the record in this docket, grant Qwest's petition for

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<sup>48</sup> 47 U.S.C. § 160(a).

forbearance from its statutory and regulatory obligations.

Respectfully submitted,

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