

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

In the Matter of)	
)	
Petition of Qwest Corporation for)	WC Docket No. 07-97
Forbearance Pursuant to 47 U.S.C. § 160(c))	
in the Denver, Colorado Metropolitan)	
Statistical Area)	

**REPLY COMMENTS OF THE
COLORADO OFFICE OF CONSUMER COUNSEL**

JOHN W. SUTHERS
Attorney General

Gregory E. Bunker, Esq.
Assistant Attorney General
Office of the Attorney General
Office of Consumer Counsel Unit
1525 Sherman St., 7th Floor
Denver, CO 80203
Telephone: (303) 866-5354
Fax: (303) 866-5342
gregory.bunker@state.co.us

**ATTORNEYS FOR THE COLORADO
OFFICE OF CONSUMER COUNSEL**

Colorado Office of Consumer Counsel
Colorado Department of Regulatory Agencies
1560 Broadway, Suite 200
Denver, CO 80203
Telephone: (303) 894-2121
Fax (303) 894-2117

October 1, 2007

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

In the Matter of)	
)	
Petition of Qwest Corporation for)	WC Docket No. 07-97
Forbearance Pursuant to 47 U.S.C. § 160(c))	
in the Denver, Colorado)	
Metropolitan Statistical Areas)	

**REPLY COMMENTS OF THE
COLORADO OFFICE OF CONSUMER COUNSEL**

The Colorado Office of Consumer Counsel (hereinafter “OCC”), by and through its undersigned counsel, hereby files its Reply Comments to the Petition of Qwest Corporation for Forbearance pursuant to 47 U.S.C. § 160(c) in the Denver, Colorado Metropolitan Statistical Area (“Qwest Denver Petition”).

I. Qwest’s Petition Does Not Provide A Granular Analysis and Fails To Meet Its Burden Of Proof in the Denver MSA for Mass Market Consumers.

Although, the OCC noted the existence of four rural counties in the Denver-Aurora MSA in its Initial Comments,¹ it did not follow up with the primary reason that such a fact is important in the context of the instant Petition. However, the Colorado

¹ See Initial Comments of the Colorado Office of Consumer Counsel at footnote 1; page 9; and page 10 (“The Denver Metro survey by Ciruli Associates would tend to overstate competition, as compared to competition in the Denver-Aurora MSA, because the survey *includes* the much more populated (and densely populated) county of Boulder – and thus, a more competitive county for telecommunications - and *excludes* the less populated (and less densely populated) counties of Park, Clear Creek, Gilpin and Elbert which are included in the Denver-Aurora MSA and which have a dilutive effect on the analysis of the overall competition in the MSA.”)

Public Utilities Commission (the “Colorado PUC”) did discuss the primary importance of the significant rural component of the Denver-Aurora MSA in its Initial Comments; namely, that Qwest attempted to satisfy its burden of proof for its Denver MSA Petition on an aggregated basis with no consideration given to the factual differences in the ten counties composing the MSA and the wire centers within those counties.² Significantly, Qwest’s Denver MSA Petition covers all ten counties, and the OCC shares the Colorado PUC’s concern that the “Denver MSA is much too broad and diverse to be considered as a whole.”³

Specifically, the Colorado PUC wrote that “The Denver MSA includes 43 wire centers and spans ten counties, many of which are rural and have substantially varying levels of competition [and that] Qwest has provided aggregated data in its Denver Petition, rather than a more meaningful disaggregation of data by wire center.”⁴

The OCC agrees with the Colorado PUC that a granular approach with disaggregation of data by wire center would be “more meaningful” and is the correct approach. However, the OCC believes that the Colorado PUC’s inference that Qwest’s gross (as in “broad” or “general”) approach has *some meaningful* probative value is too generous, and the Colorado PUC’s recommendation that the FCC conduct a granular approach is unnecessary.⁵

² Colorado PUC Comments at page 3; page 14. A map of the Denver-Aurora MSA showing the ten constituent counties was provided at Colorado PUC Comments, Attachment 1.

³ *Id.* at page 14.

⁴ *Id.* at page 33.

⁵ *Id.* at page 33. (“We additionally urge the FCC to conduct a granular analysis in order to recognize the various and differing characteristics of the wire centers contained in the Denver MSA.”)

The OCC believes that the FCC can, and should, reject Qwest's Petition outright for Qwest's failure to meet its burden of proof. It is unnecessary for the FCC to do what Qwest should have done initially; proffer a granular wire center analysis "in order to recognize the various and differing characteristics of the wire centers contained in the Denver MSA."⁶ Similarly, should Qwest, in the Reply Comment round, attempt to cure its failure to meet its burden of proof, as presented in its Petition, by presenting disaggregated data on a wire center basis, the OCC would recommend that the Commission dismiss such an attempt and signal to Qwest to start the process over with concrete disaggregated data rather than MSA-wide and state-wide data and conclusory conjecture.⁷ To the extent a dismissal did not occur after such an attempt to cure was made, and which would significantly alter the content of the Petition, such would clearly prejudice the commenting parties and raise due process issues.

The OCC is in general agreement (with a couple of clarifications following) with the Colorado PUC's further comment on the lack of granularity in Qwest's Petition:

Qwest has not provided the granular data that will allow the FCC to undertake the multi-level investigation of the intermodal and intramodal competition discussed above. Very little location specific data is provided; **much of what Qwest presents is MSA-wide data instead of specific wire center data.** Qwest has broken its analysis into **only two categories, mass market and enterprise, ignoring the distinctions that separate small and medium sized business from residential and enterprise market segments.**⁸

⁶ *Id.* at page 3.

⁷ Such an approach by the FCC would signal to Qwest and future filers that it intends to consistently follow its standard as enunciated recently in *Core Communications* that it will deny forbearance petitions based upon conjecture rather than concrete analysis. See OCC's Initial Comments at page 5. Also see, WC Docket 06-100, *In the Matter of Petition of Core Communications, Inc. for Forbearance*, Memorandum Opinion and Order released on July 26, 2007.

⁸ *Colorado PUC Comments* at pages 18 -19. (Emphasis added).

Regarding the above-referenced Colorado PUC's comment that most of Qwest's Petition is supported by "MSA-wide data instead of wire center data," the OCC agrees. However, the OCC also found it to be the case that some of Qwest's data was on a state-wide basis which is even less probative.⁹

Further, and regarding the above-referenced Colorado PUC's comment that Qwest has ignored the distinctions "that separate small and medium sized business from residential and enterprise market segments," the OCC is in agreement that Qwest took a broad-brushed approach in its Petition that painted over these distinctions. However, the OCC previously noted that Qwest had an almost complete silence as to the small business segment of the mass market category in its Petition.¹⁰ Such an approach is emblematic of Qwest's gross approach in its Denver MSA Petition.

II. Miscellaneous Comments Regarding Intermodal Competition from Comcast.

In initial comments filed by a group of CLECs, there is a mention in the attached Declaration of Helen E. Golding that Qwest does not have a wireless affiliate and a discussion of Qwest's comments as to Comcast's wireless service. To wit:

[I]n an attempt to make its competition appear more robust, Qwest describes *plans* of "Comcast and other cable providers" to add wireless service to their offerings. Noting that Comcast has begun offering Sprint Nextel wireless service in Boston and Portland, Qwest implies that Denver and Minneapolis-St.Paul may be among the markets for expansion of this

⁹ Colorado OCC Comments at page 11. ("Indeed, Qwest appears to be championing a state-wide analysis approach for the Commission's inquiry into competition provided by wireless.")

¹⁰ *Id.* at pages 8 – 9 ("Qwest's discussion, in its Petition on mass market consumers, starts on page 5 and ends on page 17, and is heavily weighted to residential with little evidentiary support as to small business customers.") *Also see*, page 14 and footnote 39 at page 16.

offering. Brigham/Teitzel Denver and Minneapolis-St. Paul Declarations, at paras. 19 and 20, respectively. Based on this possible, future deployment, Qwest goes on to quote Comcast marketing hype about the advantages of an expanded bundle. This kind of speculation cannot possibly form the basis for forbearance.

The OCC would clarify Ms. Golding's assertion that Qwest does not have a wireless affiliate. While it is a true statement that Qwest does not *own* a wireless affiliate, it is certainly affiliated with a wireless company and offers wireless service,¹¹ through its business unit called "Qwest Wireless."¹²

Qwest, in its Petition at page 8 makes much of Comcast's offering of wireless service in the Denver MSA through Sprint Nextel to evidence Comcast's "quadruple play" bundle and provide "proof" of the strength of intermodal competition in the Denver MSA. This is ironic for three reasons. First, Qwest Wireless itself uses Sprint Nextel to complete its "quadruple play" bundle, and thus, Comcast's potential future use of Sprint Nextel would be simply keeping up with Qwest. Second, whereas Qwest has been using Sprint Nextel for its wireless service, Comcast has yet to do such in the Denver MSA. As Ms. Golding points out in the above-referenced quote, Qwest is using an implication of a potential future event in the Denver MSA to speculate; or to gin up "evidence," to support its Petition. Third, whereas Qwest seizes upon a potential service that Comcast *may provide* in the future through Sprint Nextel, there was no mention that Sprint Nextel and Qwest would be imminently providing a new wireless serve in the Denver MSA that will provide Qwest Wireless customers the ability to make unlimited cellphone calls

¹¹ Qwest Wireless had a link, as of October 1, 2007, here:

<http://www.qwest.com/residential/products/wireless/index.html>

¹² Qwest Wireless is a Mobile Virtual Network Operator (MNVO) operating on Sprint PCS's CDMA network.

through their home Qwest broadband Internet connections.¹³ Qwest's former chief executive, Richard Notebaert, implied in his last earnings call in August of 2007 that this new service "is going to be a real boon to us" as early as the next quarter of 2008.¹⁴ Thus, it is disingenuous for Qwest to speculate on something that may happen (Comcast's use of Sprint Nextel in the future) and remain mum regarding something that was certain to happen, in the context of future intermodal competition.

Also, with regard to intermodal competition with Comcast, the Colorado PUC noted that Qwest's competition from Comcast "applies mainly to the residential market where facilities-based competition exists,"¹⁵ and the likelihood, that in a select few wire centers for the residential market, a duopoly would be the status should this Petition be granted.¹⁶ While the OCC agrees with the Colorado PUC's likely scenario, it disagrees with the assumption, upon which the PUC's tables in its Comments are based, that Qwest and Comcast "would simply be competing on price as their services are perfect substitutes,"¹⁷ and thus takes issue with the illustrative results of the tables.

The OCC believes that Qwest and Comcast also compete, and will continue to compete, on service quality and customer satisfaction. The OCC discussed this competitive point of service quality/customer satisfaction in its Initial Comments,¹⁸ and posited that should Qwest insist that "*the presence and capacity of other firms matter*

¹³ Andy Vuong, *Sprint launches new service in Denver*, The Denver Post, September 17, 2007, at the following link: http://www.denverpost.com/business/ci_6918447 Note that Denver and Indianapolis are the only two markets for the initial roll-out in 2007.

¹⁴ *Id.*

¹⁵ Colorado PUC Comments at page 3.

¹⁶ *Id.* At pages 30 – 31.

¹⁷ *Id.* At page 31.

¹⁸ Colorado OCC Comments at pages 28 - 29.

more for future competitive conditions than do current subscriber-based market shares,” then the FCC should consider Comcast’s poor marks for consumer satisfaction and Qwest’s excellent marks and how that bodes for future competition.¹⁹ Further, since writing the OCC’s Initial Comments on this point, Qwest has earned further kudos regarding its broadband service and has been awarded the top residential Internet broadband provider in the Western United States by J.D. Power and Associates.²⁰ Further, the results from the survey show that Comcast brought up the rear under the category “the rest,” which is one notch below “about average.”²¹ Thus, this further evidences that if “future competition” is what Qwest is stressing in its Petition, then Qwest has the upper hand in gaining future market share *from Comcast* and not the other way around.

III. CONCLUSION

Based upon the foregoing and upon the Initial Comments filed herein by the OCC and other commenting parties, Qwest’s Denver Petition should be denied by the Commission because the state of competition in Colorado is not sufficient to support a finding pursuant to 47 U.S.C. § 160(a)(1)-(3) and (b) that it would be in the public interest; or that “mass market” consumers (i.e., residential and small business consumers) in the Denver MSA would be adequately protected if Qwest is granted forbearance from further regulation; or that such forbearance will promote competitive market conditions;

¹⁹ *Id.* At page 28.

²⁰ *Qwest tops in West for broadband service*, Denver Business Journal, September 19, 2007. Linked at:

http://www.bizjournals.com/denver/stories/2007/09/17/daily27.html?ana=from_rss

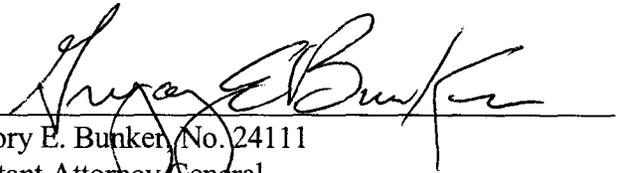
²¹ J.D. Powers and Associates’ *2007 Internet Service Provider Residential Customer Satisfaction Study*. Link at: <http://www.jdpower.com/telecom/ratings/high/west>

or that just, reasonable and non-discriminatory rates and practices would result from such forbearance.

Respectfully Submitted,

JOHN W. SUTHERS
Attorney General

BY:

A handwritten signature in black ink, appearing to read "Gregory E. Bunker", is written over a horizontal line.

Gregory E. Bunker (No. 24111)
Assistant Attorney General
Office of the Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
(303) 866-5354
(303) 866-5342 (Fax)
gregory.bunker@state.co.us

ATTORNEYS FOR THE COLORADO
OFFICE OF CONSUMER COUNSEL