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ARIZONA CORPORATION COMMISSION

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VIA HAND DELIVERY

October 3, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In re Petitions 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*, WC Docket No. 07-97-**REDACTED—FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

Enclosed for filing in the above-referenced proceeding are two copies of the REDACTED VERSION of the Arizona Corporation Commission's Reply Comments, as required by the Protective Orders in this case. These redacted Reply Comments were filed with the Federal Communications Commission on October 1, 2007, via its Electronic Comment Filing System.

In accordance with paragraph 14 of the *Second Protective Order*, dated June 1, 2007, one copy of the Reply Comments which contains Highly Confidential information is being filed under separate cover letter. Two copies of the Highly Confidential filing are also being submitted, by hand delivery, to Mr. Gary Remondino of the Wireline Competition Bureau.

Kindly date stamp the duplicate of this letter and return it in the self-address stamped envelope provided. Should you have any questions about this filing, please contact me.

Sincerely,

Maureen A Scott

Maureen A. Scott
Senior Staff Attorney

Attachments

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Maureen A. Scott
Senior Staff Attorney

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

In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant To 47 U.S.C. Section 160(c) in the Denver, Colorado, Minneapolis-St. Paul, Minnesota, Seattle, Washington and Phoenix, Arizona Metropolitan Statistical Areas	)	**WC Docket No. 07-97**

REPLY COMMENTS OF THE
ARIZONA CORPORATION COMMISSION

I. Introduction

The Arizona Corporation Commission ("Arizona Commission") appreciates the opportunity to participate in this docket at the Federal Communications Commission ("FCC" or "Commission"). Since passage of the 1996 Act, the Arizona Commission has devoted considerable hours to implementing the competitive provisions of the Act and working to ensure that there is a level playing field in Arizona.

In addition, the Arizona Commission has once again reviewed Qwest Corporation's ("Qwest") Petition, the comments of other parties in this Docket and the Verizon Forbearance Docket, and FCC Orders addressing similar requests by Incumbent Local Exchange Carriers ("ILECs").

In making its recommendations to the FCC, the Arizona Commission is mindful that it is the role of regulators to be fair and even-handed with respect to all entities and matters that come before the agency. Nonetheless, there are certain minimum standards that applicants must satisfy in order to comply with fundamental notions of due process and fair play. This is particularly true with an issue such as forbearance, which can swiftly and dramatically change the competitive landscape and rules that have been relied upon by market participants.

We do not believe that Qwest's Petition as pled meets the minimum standards in many areas. The Petition requests forbearance from a myriad of federal laws and regulations, without any discussion in many cases on the specific laws at issue and how the three-prong forbearance test is met with respect to those specific laws. Rather, the Petition is framed in a broad, sweeping fashion to encompass all of the regulations under one general discussion. The burden is on the petitioner, in this case Qwest, to clearly demonstrate that forbearance is in the public interest with respect to each and every regulation it has included in its Petition. We do not believe that Qwest's Petition as pled meets this standard. Thus, the Arizona Commission would recommend that the Commission deny Qwest's Petition as pled.

However, if the FCC believes that Qwest's Petition is worthy of further consideration, the Arizona Commission would offer the following recommendations:

First, with respect to Dominant Carrier Requirements, we believe that the FCC should consider a market definition at a zip code level and that it should disaggregate Small Business Market from the definition of Mass Market given the predominance of the Small Business Market[1] in the Phoenix Metropolitan Statistical Area ("MSA"), and its distinct competitive characteristics. In addition, we recommend herein further segmentation of the Business Market into Small Businesses, Medium Businesses and Large Businesses. Whether or not the FCC accepts the positions of the Arizona Commission on these issues, our recommendations with respect to the degree of forbearance would be the same under a MSA or wire-center level analysis.

The Commission should deny Qwest's request for forbearance as pled with respect to the specific Dominant Carrier requirements (47 C.F.R. Part 61 et al). Should

[1] http://www.msnbc.msn.com/id/9408400/, "Hot cities for small business, Top places to get things moving", By Mark Henricks, Entrepreneur.com, Sept 23, 2005.

Qwest desire to refile its petition, the Commission should require Qwest to do so based on zip code level data. The Arizona Commission's analysis indicates that Qwest may be eligible for relief in certain Residential zip codes, and that there is not presently sufficient competition by Cox in any of the Business Markets to support forbearance. The Arizona Commission recommends a similar result with respect to the specific Dominant Carrier requirements dealing with transfers of control referenced in Qwest's Petition. (47 C.F.R. Part 63 et al).

The Commission should deny Qwest's request for forbearance as pled with respect to Dominant Carrier price cap regulations (47 C.F.R. Part 61.41-61.49). The Commission should require Qwest to refile its petition based on zip code level data. The Arizona Commission's analysis again indicates that Qwest may be eligible for relief in certain Residential zip codes, and that there is not presently sufficient competition by Cox Telcom ("Cox") in any of the Business Markets to support forbearance. In addition, to the extent that Special Access is at issue, the Arizona Commission opposes forbearance of Dominant Carrier requirements in the Phoenix MSA. The NARUC telecommunications subcommittee is conducting a review on the effect of competition as it relates to Special Access based on the recent Government Accounting Office ("GAO") Report. At this point in time, granting forbearance relief is premature.

With respect to *Computer III* and Open Network Architecture ("ONA") requirements and Qwest's request for forbearance of Section 214 of the Act, the Arizona Commission recommends denial of Qwest's Petition as pled. Qwest has simply not met its burden of proof with respect to forbearance in these areas.

Finally, the Arizona Commission urges the FCC to deny Qwest's request for forbearance under Sections 251 and 271 in the Phoenix MSA at this time. Qwest's Petition as pled, including the support relied upon, is deficient. The Triennial Remand Review Order ("TRRO") has not yet been fully implemented in Arizona making Qwest's Petition premature. The predictive judgments relied upon by the FCC in the *Omaha*

Order have been undermined by subsequent events. In addition, we offer different positions for the FCC's consideration on market definition, further disaggregation of the markets, the weight to be given to retail competition by Cox in this analysis, the need for reliable data on wholesale competitive alternatives and the need to more appropriately balance the objectives of the TRRO with any request for forbearance.

In the end, we hope these comments are helpful to the FCC in performing its analysis in this case and in making its ultimate determinations.

II. Qwest's Petition As Pled Does Not Meet the Legal Standards for Forbearance In Many Cases

Under 47 U.S.C. Section 160, the Commission must forbear from applying a given provision of the Communications Act to a telecommunications carrier "in any or some of its...geographic markets," if three conditions are met:

> (1) enforcement is not necessary to ensure that charges and practices are just, reasonable and non-discriminatory;
>
> (2) enforcement is "not necessary for the protection of consumers"; and
>
> (3) forbearance "is consistent with the public interest".

In analyzing the above conditions, the Commission "shall consider whether forbearance will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." The three prongs of Section 10(a) are conjunctive. The Commission may properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.[2]

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[2] *Cellular Telecommunications & Internet Association v. FCC*, 330 F.3d 502 (2003).

Section 10(d) provides that no petition for forbearance may be granted as to the obligations in Sections 251(c) or 271 until the Commission "determines that those requirements have been fully implemented." *Id.*

Qwest bears the burden of proof and must provide reliable and verifiable data including the underlying raw data on which its conclusions were based. [3] Further, the Commission is under no statutory obligation to evaluate Qwest's Petition other than as pled.[4]

Qwest's Petition as pled is deficient in innumerable respects. Probably the most obvious deficiency is its failure, in the Arizona Commission's opinion, to separately discuss the individual provisions (or even broad categories of its Dominant Carrier obligations) and meet its burden of demonstrating that forbearance is in the public interest with respect to those provisions. For instance, in reviewing Qwest's Petition, the Arizona Commission could find no separate discussion of *Computer III* and ONA requirements and why forbearance from them would be in the public interest. The Arizona Commission could find no separate discussion of Section 214 requirements and why forbearance from them would be in the public interest. The Arizona Commission could find no separate discussion of Dominant Carrier interstate price cap provisions and why forbearance from them would be in the public interest.

It would seem that, at a bare minimum, the Petitioner in a forbearance case should be required to demonstrate that regulatory freedom from each broad category of rules is appropriate. Ideally, Qwest should discuss each rule separately and discuss why the three prongs of the forbearance test are met. In Qwest's Petition, the Arizona Commission could find one general discussion for all the Dominant Carrier requirements, *Computer III* and ONA and Section 214. For this reason, the Arizona Commission does not believe that Qwest's Petition as pled adequately explains why forbearance is appropriate in many

[3] *AT&T v. FCC*, 236 F.3d 729 (2001).
[4] *Omaha Order* at para. 61, footnote 161.

cases and why it is in the public interest and/or supplies the level of data necessary to support forbearance. Therefore, Qwest's Petition should be denied.

III. The Standards Used by the FCC to Evaluate Whether Forbearance Was Appropriate in Omaha Should Be Modified As Discussed Herein.

A. The Phoenix Market is Unique In Some Respects and the Analysis Used by the Commission Should Reflect these Differences

1. The Data Collected By the Arizona Commission Supports the Use of More Granular Market Definitions Than Those Used by Qwest to Support its Petition and Than Those Used In the Omaha Order

In the Omaha Order[5], the Commission examined the degree of competition Qwest faces in the Mass Market[6] and Enterprise Markets respectively in the Omaha MSA to determine whether forbearance from certain Dominant Carrier requirements was appropriate in those markets. In performing its analysis, the Commission focused on other facilities-based providers and their relative market share (Cox Communications in the case of Omaha) to determine whether forbearance was appropriate. Other factors considered by the Commission included demand and supply elasticities as well as the resources, size, financial strength and technical capabilities of Qwest relative to its primary facilities-based competitors.

The Commission granted Qwest forbearance from certain Dominant Carrier requirements with respect to mass market (residential and small business) interstate switched access services and interstate broadband Internet access services based mostly

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[5] *Accord, In the Matter of the Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. Section 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, Memorandum Opinion and Order (Rel. August 20, 2007)("*ACS II Order*") at paras. 27 - 29.

[6] In both the *Omaha Order and the ACS II Order*, the Commission separately analyzed mass market switched access services and mass market broadband Internet access transmission services. *Omaha Order* at paras. 25; *ACS II Order* at para. 28.

upon CoxCom's market share in the Omaha MSA[7] The Commission did not forbear with regard to enterprise services "due to a lack of serving area-wide information for the Omaha MSA."[8]

The Commission defined the market for its analysis relative to Dominant Carrier regulations to be the Omaha MSA.[9] The Arizona Commission's analysis suggests that the most appropriate definition of the geographic market would be each zip code within Qwest's service territory in the Phoenix MSA. [10] We believe that we present compelling reasons herein to warrant this deviation from the approach taken in the *Omaha Order*. However, to the extent that the Commission disagrees, we would recommend that the Commission use the wire center as the next best alternative definition of the geographic market.

The Commission used wire centers to determine whether Qwest should be granted forbearance from the unbundling requirements contained in Sections 251(c) and 271(c)(2)(B)(ii) of the 1996 Act. Again, as discussed below, the Arizona Commission's analysis suggests that use of data at the zip code level would produce better and more accurate results as far as forbearance is concerned.

2. Qwest's Data on a MSA Level are Faulty and Unreliable

In its Petition, Qwest proposed to use the Phoenix MSA as the geographical market for purposes of evaluating its Petition for forbearance from Dominant Carrier

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[7] *See Omaha Order*, para. 25.
[8] *Omaha Order* at para. 50.
[9] *Omaha Order* at para. 24. ("For purposes of analyzing dominant carrier regulation of Qwest in this proceeding, we define the relevant geographic market here to be Qwest's service are in the Omaha MSA. Qwest has proposed its service territory as the market and submitted its case consistent with that definition, so we begin our analysis with that region as the relevant geographic market unless the record indicates compelling reasons to narrow it.")
[10] For purposes of analyzing Qwest's request for forbearance from Dominant Carrier requirements in Omaha, the Commission defined the appropriate market to be Qwest's service area within the Omaha MSA. In that case the Commission noted that Qwest filed its retail data regarding the entire MSA, without disaggregating the state of competition by county, zip code, wire center or other more narrow geographic markets. However, the Commission indicated that it would consider other more narrow definitions of the geographic market if compelling reasons were provided. *Omaha Order* at paras. 23-24.

Regulations. However, the MSA data upon which it relies are faulty and incorrect in some instances.

Qwest provided the names of 40 Competitive Local Exchange Carriers ("CLECs") purchasing wholesale services from Qwest in the Phoenix MSA wire centers as of December 12, 2006. The Arizona Commission notes that some are in bankruptcy[11], some have withdrawn from residential service[12], 7[13] providers are servicing zero lines, 7[14] providers are servicing less than 80 total lines and only 12[15] providers are servicing 1,000 lines or more each. The Arizona Commission would also point out that aside from Cox, which was not on Qwest's list, none of the other CLECs has a meaningful presence in the residential market.

In addition, as pointed out by many commenters in this proceeding as well as the Verizon proceeding, Qwest once again relies upon competition from VoIP and wireless providers without any evidence that wireless service is in fact acting as a substitute for the primary line in homes or that VoIP's market share in Phoenix is meaningful at this time.

Many of the other commenters in this proceeding also noted various other deficiencies in the Qwest data, which make it unreliable and suggest that the Commission cannot rely upon it in making its determinations in this case.

3. Despite the Problems with Qwest's Data, if the Commission determines that Some Forbearance is Appropriate, Zip Code Data Produces the Most Accurate Results in the Phoenix MSA.

The Arizona Commission evaluation of the market data for the Phoenix MSA supports the use of zip code data to make forbearance determinations with respect to Dominant Carrier Requirements now applicable to Qwest. The use of wire centers

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[11] REDACTED

[12] REDACTED

[13] Derived from Qwest Response to STF 2.27 in the *State Generic Competition Docket.*

[14] Derived from Qwest Response to STF 2.27 in the *State Generic Competition Docket.*

[15] Derived from Qwest Response to STF 2.27 in the *State Generic Competition Docket.*

would be the next best alternative, however, in Phoenix there are some significant variations in competitive conditions between wire centers and zip codes.

There are also important policy reasons which support the use of zip codes rather than MSA or wire center data for the forbearance analysis in Phoenix as well. Wire centers are historical wireline local exchange designations used by ILECs, such as Qwest. However, since many new telecommunications entrants do not define their service areas on the same terms, analyzing the competitive landscape in traditional terms can produce results which are inconclusive and misleading at best. Without use of zip code information, for example, analysis of Cox information is difficult at best and it is a major undertaking to just match Cox's market presence with any degree of certitude.

Providers with their own distribution facilities who are not dependent on Qwest for unbundled elements or resale services, have no need to align their operational support systems to fit the wire center methodology of the ILEC. Analyzing competitive information on the basis of Qwest's wire centers becomes problematic as the set of market participants broadens. Resale and Unbundled Network Element ("UNE") competitive options can be easily framed by wire center boundaries because the facilities are those of Qwest, the ILEC. Full bypass competition, however, has to be estimated or developed through special studies in order to fit wire center parameters unless the Competitive Local Exchange Carrier ("CLEC") has chosen to mirror Qwest's wire center boundaries.

While we are not suggesting that the Commission rely upon service provided by Voice over Internet Protocol ("VoIP") providers or wireless providers as a substitute for wireline service for the reasons given above and in the Omaha Order, the information fit becomes even more problematic should wireless and VoIP competition be considered in the future. In using the wire center parameters for areas that could be deemed competitive, there is the implied requirement that information derived from new and emerging competition must fit into a scheme intended to facilitate the measurement of ILEC regulated services.

Wireless and VoIP providers make no use of Qwest's wire center boundaries for providing service. Aside from the billing address, the only service location known for a wireless user while a call is in progress is the nearest cell site. VoIP users are able to move their equipment and service to other broadband access points and, consequently, are also not restricted by fixed wire center boundaries. Therefore, evaluating competition at the ILEC wire center level requires a full appreciation of the inherent measurement and analysis weaknesses associated with the available information. In the *Omaha Order*, the Commission stated:

> "Because Qwest has not submitted sufficient data concerning the full substitutability of interconnected VoIP and wireless services in its service territory in the Omaha MSA, and because the data submitted do not allow us to further refine our wire center analysis, we do not rely here on intermodal competition from wireless and interconnected VoIP services to rationalize forbearance from unbundling obligations." [16]

While no methodology may be perfect, the zip code measure is broadly accepted by many industries. Zip codes are geographic definitions provided by the United States Postal Service and used by all telecommunications providers for service and billing operations. Using zip code based information would allow the Commission to make more focused and better informed decisions with respect the whether forbearance is appropriate and the degree of forbearance that should be considered.

The Arizona Commission's research indicates that the Phoenix MSA consists of 212 zip codes[17] - 189 zip codes in Maricopa County and 23 zip codes in Pinal County. Qwest's 64 wire centers contain REDACTED unique zip codes within their fixed

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[16] *See Omaha Order* at para. 72. We believe that this finding is equally applicable to Qwest's instant Petition.

[17] Sources:http://www.aggdata.com/free/zip-code, ttp://www.melissadata.com/Lookups/countyzip.asp.

boundaries (Attachment A). The zip codes not within the fixed boundaries of Qwest's wire centers apply to unassigned land, areas served by others ILECs, such as Accipiter Communications and Midvale Telephone Exchange, or Native American community areas served by ILECs not regulated by the Arizona Commission.

Though wire centers are defined by fixed boundaries and have discrete zip codes within fixed boundaries, wire centers can also be defined as service locations or where customers are actually located. Because zip codes often cross wire center boundaries, the REDACTED unique zip codes[18] within Qwest's 64 Phoenix MSA wire centers actually become REDACTED unique or *partial* zip codes[19]. Only REDACTED zip codes are distinctly within only one wire center. REDACTED zip codes are actually shared by many Qwest wire centers.

The complexity of the situation is best understood with an example, such as the Phoenix Main wire center. Phoenix Main contains only REDACTED zip codes within its fixed boundaries but also provides services to REDACTED zip codes in other wire centers within Arizona. REDACTED of the zip codes are within the Phoenix MSA. By itself, the Phoenix Main wire center provides service to some number of customers in REDACTED of the unique zip codes within REDACTED of the REDACTED wire centers in the Phoenix MSA.

In Example A below, zip code 85XXX is a highly competitive service area viewed in traditional wire center terms. Example B, illustrates four wire centers sharing zip code 85XXX, a situation that is not unusual[20] in the Phoenix MSA.

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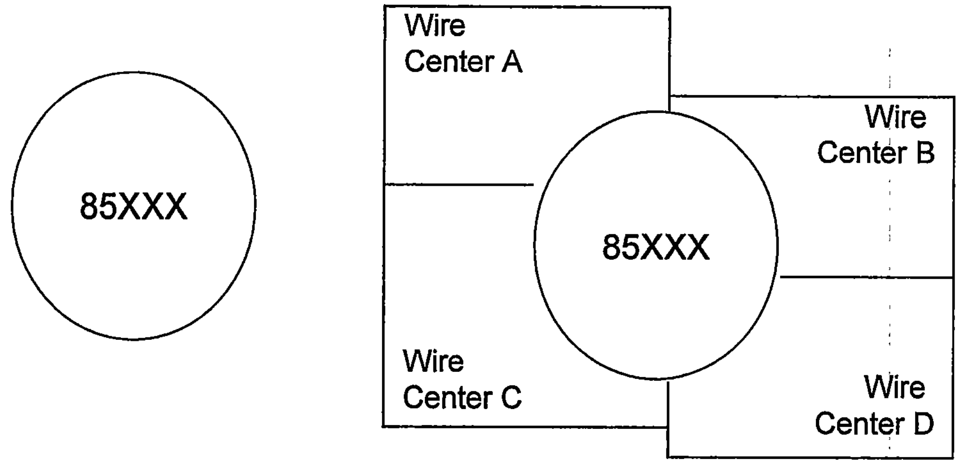
[18] Unique zip codes are those that appear only once. E.g. there is only one 85258 zip code.
[19] Partial zip codes are those that are shared among wire centers. E.g., 85004 is shared among several wire centers. A unique zip code can be several partial zip codes.
[20] REDACTED

Example A

Example B



If the competitive situation in zip code 85XXX must first be attributed to a wire center, what is the process to assign one zip code to four wire centers? Even if the competitive situation could be reasonably assigned to Wire Centers A to D, would the Commission deem it reasonable to grant forbearance to four wire centers rather than one zip code? Since full bypass CLECs do not keep data in accordance with wire center boundaries, the use of wire center analysis, alone, presents an inaccurate and incomplete view of competition. Zip code information, however, is available from all providers.

B. Greater segmentation of the Business Market is Also Required in the Phoenix Market to Recognize its Unique Nature.

The Phoenix telecommunications market is unique in many respects.[21] That uniqueness is reflected in the underlying data. The Small Business Market is generally believed to be a dominant segment within the Phoenix marketplace. Unlike the

[21] In both the *Omaha Order* and the *ACS I Order*, the record did not provide the Commission with a basis for a more granular breakdown between small and large businesses or other categories. Thus the Commission in those proceedings, did not attempt to analyze enterprise services at a more disaggregated level.

Residential Market, there REDACTED in this market, even from the large facilities-based cable provider, Cox.

The Medium Business Market in Phoenix has the greatest degree of competition. Again, however, competition in that market is in large measure provided by CLECs which are dependent upon Qwest's network. The data demonstrate that Cox is REDACTED in this marketplace either.

Finally, with respect to the Large Business Market, the statistics again indicate a unique competitive scenario distinct and independent from the characteristics of the other two business markets. The Large Business Market is not as competitive as the Medium Business Market, and once again, Cox REDACTED in that marketplace. These statistics are discussed below.

1. An Analysis Using These More Defined Market Segments Demonstrates that there are Variations in Competitive Conditions that Would Not be Recognized When Using the MSA as the Geographic Market in Phoenix

A. The Residential Local Exchange Market

Phoenix MSA zip code level information provided by Qwest, Cox and the other CLECs during this proceeding has allowed the Arizona Commission to summarize the following for the Residential Local Exchange Market:

- Qwest serves within all REDACTED zip codes covered by the fixed boundaries of its 64 wire centers (Attachment B).
- Cox serves within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.

- *The major CLECs*[22]*, other than Cox, together serve within* REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- Qwest residential access line share estimate based on the CLECs providing information is approximately REDACTED.
- Of the CLECs that provided information, Cox is providing the REDACTED lines in this market segment, REDACTED.
- Cox has at least a REDACTED access line share position in REDACTED zip codes that have a presence in REDACTED of Qwest's 64 wire centers.

As demonstrated by the above information, the Residential Market is competitive but dominated by two providers; Qwest and Cox. There is little evidence to suggest that competition outside of these two competitors is increasing. In fact, the shrinking number of competitors suggests that residential local exchange competition is continuing on a downward path in the Phoenix MSA.

There is reason to believe that the coverage of Cox facilities-based network is extensive in the Phoenix MSA. The Arizona Commission, however, does not have exact data on the Phoenix network coverage of Cox, although a reasonable estimate can be drawn from the information provided in Attachment C. However, importantly, Attachment C also illustrates that there are many Qwest Phoenix MSA zip codes and wire centers in which Cox either has no facilities or has chosen not to provide local exchange service to the Residential Market. Cox appears to have many zip codes with REDACTED residential access line share. That is why at least in the Phoenix MSA, it is important to do any forbearance analysis on a more granular level than that done by the Commission in the past in other markets. Without this granularity, any grant of

[22] Covad, Cox, Eschelon, Integra, Qwest, TWTC and XO provided zip code level information; AT&T and McLeodUSA were not able to provide zip code level information in time for this report; Updated information can be provided when available.

forbearance by the Commission will be over-inclusive and not justified by the evidence in this proceeding.

B. The Small Business Local Exchange Market

Phoenix MSA zip code level information provided by Qwest and the CLECs during this proceeding has allowed the Arizona Commission to summarize the following for the Small Business Local Exchange Market:

- Qwest serves within all REDACTED zip codes covered by the fixed boundaries of its 64 wire centers (Attachment B).
- Cox serves within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- The major CLECs, other than Cox, together serve within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- Qwest small business access line share estimate based on the CLECs reporting is approximately REDACTED.
- Cox may well have a REDACTED share, which is well over 50% of the estimated total REDACTED CLEC share.
- The highest access line share gain by CLECs appears to be REDACTED but in REDACTED zip code served by Qwest.

Among the major CLECs, only REDACTED reported participating in Small Business. Cox's entry into the local exchange market in the Phoenix area was focused on the residential market, but appears to be progressing into Business Market segments as well. However, competition at this time in the Small Business Market REDACTED.

The Arizona Commission urges the Commission to separate out the Small Business market since the data collected by the Arizona Commission indicate that its competitive characteristics are very different than the Mass Market.

C. The Medium Business Local Exchange Market

Phoenix MSA zip code level information provided by Qwest, Cox and the other CLECs can be summarized as follows for the Medium Business Local Exchange Market:

- Qwest serves within all REDACTED zip codes covered by the fixed boundaries of its 64 wire centers (Attachment B).
- Cox serves within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- The major CLECs, other than Cox, together serve within REDACTED zip codes; however, they appear to only serve within REDACTED of Qwest's 64 wire centers. This indicates that while the CLECs do not serve Medium Business within all of Qwest's wire centers, the CLECs do serve in areas not served by Qwest.
- Qwest Medium Business access line share estimate based on the CLECs reporting is approximately REDACTED.
- Cox has approximately REDACTED Medium Business access line market share; the other CLECs have approximately REDACTED access line share.
- The CLECs jointly have a 50% access line share or greater position in REDACTED zip codes but REDACTED of the zip codes have a presence in REDACTED of Qwest's 64 wire centers.

As illustrated by the above information, the Medium Business Market is highly competitive and will become more competitive if Cox continues to acquire customers in this segment. However, at this time, Cox's presence in this market is REDACTED. Most of the competition is coming from CLECs which rely upon Qwest's facilities in part to provide service. In contrast to Residential, Small Business and even Large Business, all major CLECs are active in the Medium Business segment. Prematurely reducing competitive alternatives in the Medium Business Market would have more dramatic consequences than in any other market segment.

D. The Large Business Local Exchange Market

Phoenix MSA zip code level information provided by Qwest, Cox and the other CLECs can be summarized as follows for the Large Business Local Exchange Market:

- Qwest serves Large Business only within REDACTED zip codes covered by the fixed boundaries of its 64 wire centers (Attachment B).
- Cox serves within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- The major CLECs, other than Cox, together serve within REDACTED zip codes and REDACTED of Qwest's 64 wire centers.
- Qwest Large Business access line share estimate based on the CLECs reporting is approximately REDACTED.
- Cox has approximately REDACTED Large Business access line market share; the other CLECs have approximately REDACTED share.
- The CLECs jointly have a 50% access line share or greater position in REDACTED zip codes but only REDACTED of the zip codes have a presence in REDACTED of Qwest's 64 wire centers.

As illustrated above, the Large Business Market in Phoenix is centered within a limited set of geographic boundaries, i.e., a few zip codes and wire centers. The characteristics of the customers make them easy to locate, but a challenge to serve. Many Large Business customers have service needs that cannot be fulfilled by just one provider. So, to summarize, while Cox's presence in the large business market is

REDACTED *in the market compared to Qwest. Most of the competition is coming from* other CLECs which are dependent on Qwest facilities in part to provide service.[23]

IV. Qwest's Petition As Pled does not Meet the Three Pronged Forbearance Test to Support its Requests for Forbearance of Dominant Carrier Requirements

Qwest's request for forbearance can be summarized as follows: 1) Qwest seeks forbearance from loop and transport unbundling obligations to which it is currently subject to under 47 U.S.C. Section 251(c), 47 U.S.C. Section 271(c)(2)(B)(ii) and 47 C.F.R. Section 51.319(a), (b) and (e); 2) Qwest seeks forbearance from the Commission's *Computer III* requirements including comparably efficient interconnection ("CEI") and ONA requirements; and 3) Qwest also seeks relief from many dominant carrier regulations including the following: 47 U.S.C. Section 214, 47 C.F.R. Sections 61.32, 61.33, 61.38, 61-41-61.49, 61.58-61.59, 63.03-63.04, and 63.60 through 63.66.

Having carefully reviewed Qwest's Petition, the Arizona Commission would summarize its general observations with respect to Qwest's request for forbearance of Dominant Carrier Requirements in the Phoenix MSA as follows.

First, Qwest's Petition as pled is deficient in innumerable respects. Probably the most obvious deficiency is its failure, in the Arizona Commission's opinion, to separately discuss the individual provisions (or even broad categories of its Dominant Carrier obligations) and meet its burden of demonstrating that forbearance is in the public interest with respect to those provisions. There is no separate discussion of *Computer III* and ONA requirements and why forbearance is in the public interest. There is no separate discussion of Section 214 and why forbearance is in the public interest. There is no separate discussion of why forbearance from federal price cap requirements is in the public interest.

[23] See Attachments D1, D2 and D3.

Second, the underlying data provided by Qwest is suspect in that it is not accurate in some instances; in other instances it may be accurate in a general way but when reviewed in more detail one finds it to be misleading for the proposition for which it was cited. Finally, in other instances Qwest's support for its Petition is based solely upon anecdotal statements. The Arizona Commission recognizes that not all of the necessary data may be available to Qwest. However, the Arizona Commission was able to verify, on the basis of the public record, that portions of Qwest's data were not accurate or were misleading.

Notwithstanding these serious deficiencies, to the extent any forbearance is granted, the Arizona Commission makes the following recommendations.[24] First and foremost, the Arizona Commission recommends that the Commission deny Qwest's petition as pled and, to the extent that Qwest desires to refile, the Commission should order Qwest to do so based on data at a zip code level. If the Commission proceeds to consider Qwest's petition, then Qwest may be eligible for some relief. These recommendations apply regardless of the market definition ultimately chosen by the Commission. For instance, under subpart A below, if the Commission determines that the appropriate market is the Phoenix MSA, then the Arizona Commission would still recommend that Qwest may be eligible for relief only in the Residential market at this time based upon the available data.

A. 47 C.F.R. Sections 61.32, 61.33 and 61.38, 61.58 and 61.59

Those rules require Qwest to file federal tariffs as well as supporting information and provide for notice before changes take effect.

[24] These Comments address special access separately, to the extent it is encompassed within Qwest's Petition for Forbearance.

In the *Qwest Nondominance Order*[25], the Commission granted Qwest's request for forbearance from applying Sections 61.31-61.38 and 61.43 of the Commission's rules, 47 C.F.R. Sections 61.31-61.38 and 61.43 for in-region, interstate, interLATA telecommunications services. However, the Arizona Commission believes that the interstate, interLATA toll market is much different than the local exchange market in Arizona, and thus the Commission's grants of relief in the *Qwest Nondominance Order* should not inform the Commission's decisions in this case. However, there are certain determinations in that case that are relevant to this case.

Using the available market data criteria available from a review of the redacted *Omaha Order*, however, forbearance may be appropriate in the Residential Market in certain zip code geographic areas only.[26] As discussed above, the data collected by the ACC on a zip code level does not meet the Commission's test in many zip codes. However, to the extent forbearance is granted in certain zip codes, Qwest must at a minimum be subject to the same tariffing and other rules applicable to non-dominant carriers. Further, as in the *Omaha Order*, any forbearance should be conditioned upon Qwest's compliance with regulations that apply to all competitive LECs, in particular section 61.26 of the Commission's rules.

However, it is the Arizona Commission's recommendation that the Commission grant no forbearance of these Dominant Carrier requirements in any of the three business markets in any zip code in Phoenix at this time, since it is not supported by the underlying data. Cox's presence in all of these markets at this time is limited. Competition in the Medium Business and Large Business markets is dependent upon CLECs which rely upon Qwest's facilities to provide service. There is virtually no competition in the Small Business Market at this time.

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[25] *In the Matter of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules as They Apply After Section 272 Sunsets, WC Docket No. 05-333, Memorandum Opinion and Order*, 22 FCC07 (2007) ("*Qwest Nondominance Order*").
[26] The Commission also considered market elasticities (both supply and demand) as well as firm cost, size and resources.

In summary if the Commission does not deny Qwest's petition as pled, Qwest may meet the three-prong test in some zip codes for the Residential Market. Qwest, should however, be subject to the same requirements as its non-dominant competitors in those zip codes. The three prong test is not met in the other zip codes for the Residence Market, and Qwest should not be given relief from any of the Dominant Carrier requirements in those markets.

Qwest does not meet the three prong criteria in any zip codes at this time for the Small Business, Medium Business or Large Business markets and should not be given relief from any of the Dominant Carrier requirements in those markets.

B. 47 C.F.R. Sections 61.41-61.49

These federal regulations contain price cap regulations that apply with respect to Qwest's interstate services.

The Arizona Commission believes that Qwest should have separately discussed these provisions in its Petition, and since it did not, its request for forbearance should be denied. It has not met burden of proof in its Petition as pled why it meets the three-prong test contained in Section 10 and why forbearance from these provisions is in the public interest.

If, however, the Commission believes that Qwest has met its burden of proof in its Petition, than the Arizona Commission's recommendation would be that any forbearance granted to Qwest in its service area in the Phoenix MSA should be limited to certain zip codes in the Residential Market only. However, with respect to any forbearance given on federal price cap regulation with respect to Residential Market zip codes, the Commission should also extend to Qwest the current benchmark that applies to all of its competitors i.e., the *CLEC Access Charge Reform Order's* benchmark regime, as was done in the *Omaha Order*.[27]

We do not recommend, on the basis of Qwest's Petition as pled or the data independently collected by the Arizona Commission, that Qwest request for forbearance be granted, since it does not meet the three prong test for the Small Business Market, Medium Business Market or Large Business Market because Cox's penetration into these markets is limited at this time.

C. 47 C.F.R. Section 63.03, 63.04, 63.60-63.66

Qwest's Petition also sought forbearance of particular provisions of Part 63. which relate to Dominant Carrier requirements pertaining to transfers of control. These Commission rules pertain to extension of lines, new lines, and discontinuance, reduction, outage and impairment of service by common carriers and grants of operating agency status. In addition, Section 63.03 is a streamlined process for domestic transfer of control applications.

Qwest's request for forbearance does not meet the three prong test in any zip codes for any of the Business markets, Small Business, Medium Business and Large Business. Based upon the data collected, the Arizona Commission could find, at most, that Qwest's request for forbearance may meet the three prong test for certain zip codes only with respect to the Residential Market.

However, such forbearance for Residential switched access services would not be appropriate without the same safeguards the Commission imposed in Omaha. In its *Omaha Order*, the Commission stated "[f]or all mass market switched access and broadband Internet access services, we find that continued application of our dominant carrier discontinuance rules is not necessary to ensure that Qwest's charges, practices, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory as long

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[27] See *Omaha Order* at para. 41.

as Qwest is subject to the same treatment as non-dominant carriers under those rules." Qwest must be subject to the same treatment as non-dominant carriers under those rules."[28] In the *Omaha Order*, the Commission specifically conditioned forbearance upon treatment of Qwest as a non-dominant carrier. Imposition of those same safeguards would be necessary for the grant of any forbearance with respect to this group of regulations.

D. 47 U.S.C. Section 214

47 U.S.C. Section 214 applies to extensions of lines or discontinuance of service; and certificates of public convenience and necessity.

Qwest's Petition as pled does not contain any specific discussion regarding the requirements of Section 214 and how the FCC's grant of forbearance from these requirements would be in the public interest or otherwise meet the three pronged statutory test. As such Qwest has not met its burden of proof with respect to this section of the Act, and related FCC regulations. The Arizona Commission therefore believes that the Commission should deny this portion of Qwest's Petition.

E. *Computer III* and ONA

Qwest has not justified forbearance from the *Computer III*[29] and ONA requirements for any market in Arizona. The *Computer III* series of Orders specified the conditions under which the Bell Operating Companies ("BOCs") could provide enhanced computerized data services to their customers in addition to providing basic telephone service.[30] *Computer III* eliminated earlier requirements that the BOCs

[28] *Omaha Order* at para. 43.
[29] *In re Amendment of Sections 64.702 of the Commission's Rules and Regulations* (*Third Computer Inquiry*), Docket No. 85-229, Report and Order, on reconsideration, 2 F.C.C.R. 3035 (1987); 2 F.C.C.R. 3072 (1987); Memorandum Opinion and Order on Further Reconsideration, 3 F.C.C.R. 1135 (1988); Memorandum Opinion and Order on Reconsideration, 3 F.C.C.R. 1150 (1988)(collectively "*Computer III*").
[30] *See California v. FCC*, 39 F.3d 919 (1994).