

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

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Polly Page, Commissioner
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Department of Regulatory Agencies

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Executive Director



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NOTICE OF ORAL *EX PARTE* CONTACTS

November 29, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

Re: Ex Parte Notice filed electronically in the proceeding captioned:

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

Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172

Dear Ms. Dortch:

On November 28, 2007, in a conference call with Ian Dillner of Chairman Martin's office (at 2:30 p.m.), and on November 29, 2007 in a conference call with Dana Shaffer of the Wireline Competition Bureau (at 2:30 p.m.), two State commissioners presented their concerns about the upcoming decision next month in the Verizon petition and its possible precedential value for the pending Qwest forbearance request in the above captioned proceedings.

Chairman Ron Binz of the Colorado Public Utilities Commission and Commissioner Tom Pugh of the Minnesota Public Utilities Commission participated on these calls. The State commissioners had several staffers join them for the call, but only the commissioners presented their views to members of the FCC staff.

Chairman Binz's comments paralleled the comments filed by the Colorado Commission in the Qwest proceeding. Commissioner Pugh noted that his Commission would be filing comments shortly in the Qwest proceeding. During the presentations, Chairman Binz and Commissioner Pugh also referenced the comments filed in these dockets by the two other affected states, Washington and Arizona. For convenience, I have included the URLs from the FCC website linking to the full text of the various comments that were referenced in the meetings.

1560 Broadway, Suite 250, Denver, Colorado 80202 303-894-2000

www.dora.state.co.us/puc
Permit and Insurance (Outside Denver) 1-800-888-0170
TTY Users 711 (Relay Colorado)
Consumer Affairs 303-894-2070

Consumer Affairs (Outside Denver) 1-800-456-0858
Hearing Info 303-894-2025
Transportation Fax 303-894-2071
Fax 303-894-2065

[1] 10/05/07 Arizona Corporation Commission Letter and Comments:
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519742201
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519742202
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519742203

[2] 10/01/07 Arizona Corporation Commission Reply Comments
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519739017

[3] 08/31/07 Arizona Corporation Commission Initial Comments
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721311

[4] 08/31/07 Colorado Public Utilities Commission Initial Comments
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721184

[5] 08/29/07 Washington Utilities and Transportation Commission Initial Comments
URL: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519717767

A summary of the points made by each commissioner on one or more of the calls follows:

The Honorable Ron Binz, Chairman Colorado PUC

Chairman Binz pointed out that the timing of this ex parte presentation was driven by the fact that the commissions in the affected Qwest states were all concerned that the impending FCC decision on the Verizon forbearance petition would likely incorporate principles and analysis that would impact the Qwest petition. For that reason, the Commissioners strongly suggested that, before focusing on that framework, the FCC should examine the State comments in the Qwest proceeding. Further, Chairman Binz made these points:

[[1] The Denver MSA includes 43 wire centers and spans ten counties, many of which are rural and have substantially varying levels of competition. Qwest is requesting relief for the entire MSA. A proper analysis must consider disaggregated data and target such considered relief by wire center. Blended information masks the fact that there are large exurban areas – rural and sparsely populated – included in the request that have virtually no competitive alternatives, at least not for the small business market

[2] There is not sufficient facilities-based competition for business service in this MSA to justify granting the petition. Most of Qwest's facilities-based competition is from Comcast and is mainly in the residential market. The available data does not support the conclusion that Qwest faces similar pressure from facilities-based competitors in the retail business market, except in a few wire centers. The FCC's analysis should not rely on promised, yet speculative, competition in business markets as a basis for removing the unbundling requirement; actual competition is the appropriate standard. The FCC's analysis should be granular, recognizing the widely differing characteristics (e.g., customer density, extent of Comcast's footprint) of the wire centers of the Denver MSA.

[3] Facilities-based competition may eventually develop in the business market served by CLECs today. Until then, it is neither necessary nor desirable to damage existing UNE-based competition by eliminating the unbundling requirement in an attempt to spur the development of facilities-based competition in that market.

[4] Unbundled network elements remain a necessary input into the competition present in today's local exchange markets in the Denver MSA. Eliminating the unbundling requirement is not likely to increase competition in the short run. Instead, it will threaten the existence of many of the competitive alternatives available to the business customers served by CLECs today.

[5] The Colorado PUC has granted Qwest substantial pricing flexibility and deregulation for business service under the assumption that CLECs will continue to offer competitive choices using UNE loops to provide the CLEC service. The FCC should know that states like Colorado may have to consider

reversing such regulatory relief if CLEC competitors disappear due to the elimination of the unbundling requirements.

The Honorable Thomas Pugh, Commissioner Minnesota Public Utilities Commission

[1] While Minnesota has not yet filed comments, we have sought information from Qwest and competitors, and based our analysis have some concerns and questions about the FCC proceeding on the Qwest forbearance petition.

[2] We have authorized our staff to prepare comments to be filed in the Quest docket at our last open meeting. The commission will receive them shortly. We share many of the concerns already discussed – in terms of the impact on competition in Minnesota if the petition is granted.

[3] Our concerns are particularly focused on the small and medium business or enterprise market in our state. We call businesses with 1-3 lines small and the medium business market to be those with 4-200 lines. I believe 90 percent of services to these to groups are provided via UNEs/Qwest's facilities. For large businesses, this is not the case. They have facilities-based competitive alternatives. To some extent, the way Qwest averages all the categories together masks the real impact in small and medium market areas. There is no reason to rush to judgment. Qwest had decades to put together its network and it was operating in a monopoly environment with essentially guaranteed ratepayer support. We believe it will likely take the CLECs longer to get there.

[4] We are very concerned about the impact of the FCC's decision in the Omaha market. We don't want that impact in our State. And Qwest does have a mechanism to get more targeted relief already via the TRO process.

Do not hesitate to contact me at 303-894-2007, if you have any questions about this pleading.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald J. Binz". The signature is written in a cursive, flowing style.

Ronald J. Binz
Chairman, Colorado Public Utilities Commission