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EX PARTE OR LATE FILED

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REDACTED – FOR PUBLIC INSPECTION

FILED/ACCEPTED
MAR 14 2008
Federal Communications Commission
Office of the Secretary

VIA COURIER

EX PARTE

March 14, 2008

ORIGINAL

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

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis – St. Paul Metropolitan Statistical Area,* WC Docket No. 07-97

Dear Ms. Dortch:

Qwest Corporation hereby submits the attached *ex parte* and request for confidential treatment (pursuant to the relevant Protective Orders) of certain confidential and highly confidential information included in the *ex parte*, in the above-captioned proceeding.

One copy of the non-redacted version is being submitted; and two copies of the redacted version are being submitted. For both the redacted and non-redacted versions, an extra copy is provided to be stamped and returned to the courier. Both the redacted and non-redacted versions of the *ex parte* are being served on Staff of the Commission's Wireline Competition Bureau as indicated below. This cover letter does not contain any confidential information.

If you have any questions concerning this submission, please contact me using the information above.

Sincerely,

/s/ Melissa E. Newman

Attachments

No. of Copies rec'd 0+1
List ABCDE

cc: (via e-mail)
Denise Coca (denise.coca@fcc.gov)

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Qwest. Spirit of Service™

REDATED – FOR PUBLIC INSPECTION

VIA COURIER

EX PARTE

March 14, 2008

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

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis – St. Paul Metropolitan Statistical Area,* WC Docket No. 07-97

Dear Ms. Dortch:

Qwest Corporation ("Qwest") hereby requests confidential treatment of certain information included in the associated *ex parte*. Included is confidential and highly confidential information.

The type of confidential information included (among other similar kinds of data) references estimates by Qwest of its share of residential lines and cable's share of the mass market for telephone services in the Minneapolis – St. Paul, Minnesota, Metropolitan Statistical Area ("MSA"). The highly confidential information includes an updated version of Exhibit 2 that shows (by wire center) competitive local exchange carrier lines provided via Qwest wholesale products for the Minneapolis – St. Paul MSA.[1]

The confidential information is submitted pursuant to the June 1, 2007 First Protective Order (22 FCC Rcd 10129, DA 07-2292) in WC Docket No. 07-97. The highly confidential information is submitted pursuant to the June 1, 2007 Second Protective Order (22 FCC Rcd 10134, DA 07-2293) in WC Docket No. 07-97. As required by the First and Second Protective Orders, the *ex parte* with confidential information (that is, the non-redacted version) is marked **CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**, and the highly confidential updated version of Exhibit 2 is marked **HIGHLY CONFIDENTIAL – SUBJECT**

[1] Exhibit 2 was submitted initially to the Commission on April 27, 2007.

TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION. Pursuant to the First and Second Protective Orders, Qwest requests that the non-redacted version of this *ex parte* (containing confidential and highly confidential information) be withheld from public inspection.

Qwest considers this confidential and highly confidential information as being extremely competitively-sensitive in nature. This type of information is "not routinely available for public inspection" pursuant to both Commission rules 47 C.F.R. §§ 0.457(d) and 0.459 (as Qwest explained and for which it provided legal justification in its Request for Confidential Treatment and Confidentiality Justification submitted with its four Petitions for Forbearance (including the one for the Minneapolis – St. Paul, Minnesota MSA) on April 27, 2007.

Qwest is simultaneously submitting, under separate covers. a non-redacted and a redacted version of the associated *ex parte*. The redacted version of the *ex parte* is marked "**REDACTED - FOR PUBLIC INSPECTION**". Both the redacted and non-redacted versions of the *ex parte* are the same except that in the non-confidential version the confidential information has been omitted and the updated version of Exhibit 2 is not included. This cover *ex parte* letter contains no confidential information.

If you have any questions concerning this submission, please call me on 303-383-6653.

Sincerely,

/s/ Daphne E. Butler

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Daphne E. Butler
Corporate Counsel

Spirit of Service™

REDACTED – FOR PUBLIC INSPECTION

March 14, 2008

EX PARTE

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

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

Qwest Corporation ("Qwest") files this *ex parte* to respond to the February 8, 2008, *ex parte* comments of the Minnesota Public Utilities Commission ("Minnesota")[1] and to update data provided in the Brigham/Teitzel Declaration filed by Qwest on April 27, 2007.

I. REPLY TO MINNESOTA'S LATE-FILED COMMENTS

Minnesota argues that Qwest has an alternate route to relief provided in the *Triennial Review Remand Order* ("*TRRO*").[2] Presumably, Minnesota is referring to the impairment tests for dedicated interoffice transport and high capacity loops set out in the *TRRO*. Those tests do not apply in residential areas and do not take into account the presence of cable facilities, as they depend upon the size of the wire center (*i.e.*, number of business lines) and the number of fiber-based collocators. In the *TRRO*, the Federal Communications Commission ("Commission") spelled out forbearance as the means by which incumbent local exchange carriers ("LECs") can get unbundling relief due to the availability of cable facilities. The Commission specifically directed carriers to address these issues through forbearance petitions on a market-by-market basis rather than in a rulemaking or other process. The Commission noted

[1] *See Ex Parte* Comments of the Minnesota Public Utilities Commission, WC Docket No. 07-97, filed Feb. 8, 2008.

[2] *Id.* at 9, citing to *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005), *aff'd sub nom., Covad Communs Co. v. FCC,* 450 F.3d 528 (D.C. Cir. 2006).

> . . . that incumbent LECs remain free to seek forbearance from the application of our unbundling rules in specific geographic markets where they believe the aims of section 251(c)(3) have been "fully implemented" and the other requirements for forbearance have been met. One incumbent LEC, Qwest, has already sought such relief in one geographic market, and we encourage other incumbent LECs to file similar petitions where appropriate.[3]

Thus, Qwest is using the correct process to seek unbundling relief due to the presence of cable facilities.

Minnesota argues that analysis of this petition "must account for a much finer distinction between customers than the enterprise/mass-market dichotomy proposed by Qwest."[4] In considering the relevant product market in Qwest's Omaha forbearance petition, the Commission specifically *rejected* attempts by the competitive LECs to further subdivide the telecommunications services market beyond these two categories,[5] and should do so again here.

Minnesota presents an erroneous analysis of those portions of the market it believes are heavily reliant upon Qwest unbundled network elements ("UNEs"). Minnesota states that Qwest's competitors are reliant upon Qwest's facilities for over 90% of small business and medium business lines.[6] The basis for that statement is a survey that did not include responses from cable providers,[7] the source of more than **[begin confidential]** **[end confidential]** of facilities-based competition in the Minneapolis-St. Paul Metropolitan Statistical Area ("MSA"). In fact, as Qwest argued in its October 1, 2007 reply comments, Comcast, one of the leading cable providers in the Minneapolis-St. Paul MSA, has targeted small to medium businesses with under 20 employees as its next source of growth.[8] Comcast has already

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[3] *TRRO*, 20 FCC Rcd at 2557 ¶ 39 (footnotes omitted).

[4] Minnesota at 6.

[5] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, Memorandum Opinion and Order*, 20 FCC Rcd 19415, 19427-28 ¶ 22 (2005) ("*Omaha Forbearance Order*"), *pets. for rev. dismissed and denied on the merits*, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007), ("For the purposes of assessing forbearance from dominant carrier regulation, we reject suggestions from commenters that our section 251(c)(3) network element unbundling precedent controls our market framework.")

[6] Minnesota at 6-7. Minnesota defines small business as one to three lines, and medium business as four to 200 lines. *Id.* at 7.

[7] *Id.*, Attachment A at 1.

[8] *See* Reply Comments of Qwest, WC Docket No. 07-97, filed Oct. 1, 2007 at 45-47 ("Qwest WC 07-97 Reply").

introduced its Work Place Digital Voice product,[9] a suite of high-speed Internet, cable and digital voice services that is "now available across the Twin Cities metro area."[10] Comcast claims that its network can easily be linked to "many, many" small and midsize businesses.[11] And just this month Comcast has unveiled its new "Business Class" -- a bundle of broadband services, including phone service, targeting "the six million small and medium sized U.S. businesses."[12] While Comcast is a relatively new entrant into the market for business services, there is no question that it represents a formidable competitor to Qwest for business customers in the near and long term. In fact, Comcast has set a goal of $2.5 billion in revenues from its new "Business Class" division by 2011.[13] Moreover, Charter Communications, through its Charter Business division, also provides telephone service to small and medium business.[14] Charter's business telephone service is now available in the Minneapolis-St. Paul MSA.[15] Accordingly, the Commission should not rely upon Minnesota's arguments that competition for business customers with 1 to 200 lines is heavily dependent upon Qwest UNEs.

Even though Minnesota concedes that competition for the largest business customers and residential customers is not heavily reliant upon UNEs, Minnesota nonetheless opposes forbearance here too. Specifically, Minnesota concedes that UNEs are not needed for the largest business customers because competitive LECs generally construct their own facilities,[16] Minnesota still opposes forbearance from UNE requirements for such customers, leaving one to wonder why Minnesota argued for "much finer distinction[s] between customers."[17] Similarly, Minnesota opposes forbearance for UNE requirements directed towards residential customers although even in the survey that excluded cable facilities only 27 percent of residential lines

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[9] Merrill Lynch U.S. Media Conference (June 7, 2007) slide 14.

[10] *Comcast Expands Services for Twin Cities Business Owners*, Press Release, July 16, 2007.

[11] http://biz.yahoo.com/ibd/070924/general.html?.v=1&printer=1 (visited Sept. 28, 2007).

[12] *Comcast's Big Idea To Go After Small Business*, CNBC.com, Mar. 6, 2008. *See* http://www.cnbc.com/id/23501205/site/14081545?__source=yahoo%7Cheadline%7Cquote%7Ctext%7C&par=yahoo (visited March 10, 2008) and http://www.comcast.com/corporate/business/small/default.html?lid=1BusinessClass&lpos=ContentPromo (visited Mar. 12, 2008).

[13] *Id.*

[14] http://www.charter-business.com/Small-Business-Solutions-Internet-Phone-Video-SOHO.aspx and http://www.charter-business.com/Medium-Business-Solutions-Internet-Phone-Video.aspx (visited Mar. 12, 2008).

[15] *Id.*

[16] Minnesota at 7.

[17] *Id.* at 6.

served by competitive LECs relied upon Qwest's facilities.[18] In sum, Minnesota has not accurately supported its argument that the Commission should analyze the market differently than the analysis in the *Omaha Forbearance Order*. Moreover, the data underlying Minnesota's argument ignore cable providers, by far the largest source of facilities-based competition.

Minnesota also ignores the ease with which fiber can be connected to commercial buildings and lit. While Minnesota claims that only three percent of commercial buildings in the Minneapolis-St. Paul MSA are "connected to CLEC-owned loops"[19] it ignores the ease of connecting fiber to the building. Competitive LECs know that it is easy to connect existing fiber to commercial buildings. Royce Holland, then the president of McLeod, a competitive LEC with plenty of fiber in the Minneapolis-St. Paul MSA, crows that it is "easy enough" to connect a building when McLeod's fiber is nearby:

> A lot of our metro fiber is in places like Chicago, Minneapolis, St. Paul, Michigan," Holland said. "Most of the buildings we have on that fiber are collocation centers -- ILEC central offices and carrier hotels. One thing we haven't done is put lot of that fiber in office buildings, because our business [has] been the small and medium enterprise business. That doesn't mean we couldn't light a lot of buildings throughout the Midwest. That's one of the potential upside advantages of getting together with Paetec. Our fiber can be useful for that. It's easy enough to get into a manhole and get the fiber into a building.[20]

Similarly, Minnesota laments that 0.3 percent of buildings are connected to "lit" competitive LEC-owned fiber loops.[21] Excluding dark fiber ignores the ease of lighting fiber that is already connected to the building. Finally, Minnesota overlooks one of the most important facts, *i.e.*, these numbers that it laments are driven by the artificially low price for leasing loops from Qwest versus the cost of building loops. Granting forbearance will advance the Act's principal goal "to stimulate competition -- preferably genuine, facilities-based competition."[22]

Not only does Minnesota ignore the fact that the artificially low prices for UNEs impede development of true facilities-based competition, Minnesota argues that any rates above Total Element Long Run Incremental Cost ("TELRIC") "indicate that the market is not competitive"

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[18] *Id.* at 7. Presumably the 27 percent refers to reliance upon UNEs, and excludes reliance upon resale, special access, or commercial agreements such as QPP or QLSP. *See* third page of Attachment A titled "Reported Line Counts for Ten CLEC [sic] serving the Twin Cities MSA."

[19] Minnesota at 6.

[20] http://telephonyonline.com/access/news/paetec_acquires_mcleodusa_091707/ (visited Sept. 21, 2007).

[21] Minnesota at 6.

[22] *USTA v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004) ("*USTA II*").

and "reflect monopoly power."[23] To the contrary, the Commission's *Orders*, and federal court decisions, point away from using TELRIC as a pricing gauge. For example, the Commission has drawn a stark contrast between forward-looking rates and market rates. The Commission stated "it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices. Rather, the market price should prevail . . . ."[24] Similarly, in the context of looking at rates for Section 271 elements, the First Circuit agrees that Section 271 elements need not be priced at TELRIC rates, stating that the "FCC orders provide carriers the authority to charge the potentially higher just and reasonable rates, in order to limit subsidization and to encourage investment by the competitors."[25] Thus, Minnesota's arguments for TELRIC ignore the fact that such rates inhibit investment by competitors.

Finally, Minnesota argues that "an error in predictive judgment" may be irreversible,[26] asking that the Commission not grant forbearance for fear that competitors may leave the market never to return. Qwest cannot speak to Minnesota's speculation regarding whether carriers may withdraw entirely from the market if the Commission grants Qwest's petition. Nor can Qwest speak to Minnesota's speculation regarding whether any such providers would re-enter the market. Qwest can, however, point to the results in Omaha, where competition with Cox continues to flourish, and at least one non-cable competitive LEC continues to gain share in the small/medium business market.[27] In sum, Minnesota's *ex parte* does not form a basis for denying Qwest's petition.

II. UPDATED DATA

Qwest is updating data for the Minneapolis-St. Paul MSA regarding: (1) Qwest access lines; (2) competitive LEC facilities-based lines, including an estimate of cable operators' share of these lines; (3) Qwest wholesale lines provided to competitive LECs; and (4) wireless-only (*i.e.*, "cut-the-cord") households. In addition, Qwest believes that the Commission should consider this updated data. The reasons for the Commission's refusal to reconsider Verizon's updated 2007 data do not apply here. First, Qwest's updated data includes all of Qwest's line counts, whereas the Commission found that Verizon's data failed to include MCI's line counts. Moreover, Qwest's data are being filed almost five months before the fifteen-month deadline for

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[23] Minnesota at 8.

[24] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3906 ¶ 473 (1999) (subsequent history omitted).

[25] *Verizon New Eng., Inc. v. Me. PUC*, 2007 U.S. App. LEXIS 21349 (1st Cir. 2007).

[26] *See* Minnesota at 8-9.

[27] *See* Qwest *ex parte*, WC Docket No. 04-223, filed Dec. 18, 2007 at 10-13.

action on our petition, which will allow all interested parties sufficient time to review, analyze and comment on Qwest's data.[28]

In the *Verizon 6 MSA Order*, the Commission appears to have adopted a market share test, requiring that the incumbent hold less than 50 percent market share for mass market telephone services in order to forbear from the requirement of loop and transport unbundling. While the market shares in paragraph 27 are redacted, the Commission states in paragraph 30 that it does not stray from dominant carrier treatment where a carrier has more than 50 percent of the market. In Paragraph 36 the Commission rejects unbundling relief because, "Verizon is not subject to a sufficient level of facilities-based competition in the 6 MSAs to grant relief."[29] The Commission appears to have measured facilities-based competition by market share, rather than by the existence of facilities, because the Commission acknowledged that the 75 percent threshold was met in some wire centers, and stated that forbearance might be warranted in such wire centers, upon a showing of a more competitive environment.

This market share test is a departure from the *ACS* and *Omaha* decisions, in which the Commission measured competition by the presence of non-ILEC last mile telecommunications facilities. In the *ACS Order* the Commission relied on the presence of facilities-based competitors, stating that its:

> . . . reliance on extensive facilities-based coverage for determining where forbearance is warranted stems from the importance facilities-based last-mile deployment plays in lessening the need for regulatory intervention. As the Commission previously has found, the telecommunications industry is characterized by high fixed and sunk costs, network effects, and economies of scale, among other barriers to entry. When a new market entrant has overcome these barriers by investing heavily enough in its own facilities that it satisfies the last-mile coverage threshold we adopt here, we believe the new entrant has demonstrated a deep commitment to compete vigorously for customers. In areas where competitive last-mile facilities deployment satisfies the coverage threshold we set forth above, we have solid evidence that the competitive entrant in all probability will be able to fulfill those commitments.[30]

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[28] *See In the Matter of 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*, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21308 n.91 (2007) ("*Verizon 6 MSA Order*"), *appeal pending sub nom. Verizon Telephone v. FCC*, No. 08-1012 (D.C. Cir., filed Jan. 14, 2008).

[29] *See id.* at 21307-08 ¶ 27, 21310 ¶ 30 and 21312 ¶ 36.

[30] *In the Matter of 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*, Memorandum Opinion and Order, 22 FCC Rcd 1958,

In the *Omaha Forbearance Order* the Commission stated that it would forbear where there was sufficient facilities-based competition from Cox, and then announced its 75 percent facilities coverage threshold.[31]

Prior unbundling decisions in the courts and before the Commission have not adopted a market share test either. The D.C. Circuit stated in its *USTA II* decision that the Commission cannot "simply ignore facilities deployment along similar routes when assessing impairment."[32] In its *TRO,* the Commission defined impairment to focus on whether lack of a network element "poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic."[33] The Commission did not focus on whether competitors in the residential market had achieved a market share greater than 50%.

In the *USTA I* decision the D.C. Circuit cautioned the Commission against imposing the costs of unbundling if doing so would not bring on a significant enhancement of competition.[34] In the *TRO*, when deciding to end the requirement that incumbent LECs offer line-sharing as a UNE, the Commission noted that the fact that broadband service is actually available through another network platform and may be available through additional platforms helps alleviate any concern that competition in the broadband market may be heavily dependent upon unbundled access to the high frequency portion of the loop. The Commission noted that the benefits to consumers of unbundling were reduced because there would be some measure of competition without unbundling. That decision is in line with the 1996 Act's ultimate goal of providing consumers with the benefits of competition, rather than providing benefits to competitive LEC competitors.[35]

1977 ¶ 31 (2007) (footnotes omitted), *appeals dismissed for lack of standing, Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076 and 07-7122 (9th Cir. 2007).

[31] *Omaha Forbearance Order*, 20 FCC Rcd at 19445-46 ¶¶ 61 and 62.

[32] *USTA II*, 359 F.3d at 575.

[33] *See, e.g., In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17035 ¶ 84 (2003) ("*TRO*"), *corrected by Triennial Review Order Errata,* 18 FCC Rcd 19020 (2003).

[34] *USTA v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) (subsequent history omitted) ("*USTA I*").

[35] *TRO*, 18 FCC Rcd at 17127-28 ¶ 246. Because competition without UNEs is possible in the Minneapolis-St. Paul MSA -- not to mention successful -- the impairment standard in Section 251(d)(2) is not met. That is, there is no impairment, so the Commission may not retain the unbundling requirement. Intermodal local exchange competitors such as wireless and cable are robust competitors without reliance upon Qwest's UNEs. Therefore, it makes no sense to

Similarly, in the Minneapolis-St. Paul MSA, loop and transport unbundling does not bring a significant enhancement to local exchange competition, even if it benefits certain competitive LEC competitors. That is, the existence of intermodal alternatives (cable and wireless) in the residential market reduces the benefits to consumers of unbundling, because there would be vigorous competition even without unbundling.[36] In fact, as shown below the vast majority of competitive LEC competition in the Minneapolis-St. Paul MSA comes from cable, and thus would exist without unbundling. Thus, the cost benefit analysis for unbundling in the Minneapolis-St. Paul MSA is quite different from the same analysis in a geographic area without facilities-based competitors offering competitive services via entirely separate network platforms. In the Minneapolis-St. Paul MSA, UNEs just are not "vital to the continued development of competition in the local exchange market."[37]

Even though the market share test is ill-advised, Qwest followed the methodology laid out in the *Verizon 6 MSA Order*, and evaluated its own residential access line counts, along with competitive LEC residential line counts (*i.e.*, including estimated cable, as well as actual resale, and QPP lines) and "cut-the-cord" wireless customer data. Based on this analysis, and as shown in the Appendix, Qwest estimates that its share of residential lines in the Minneapolis-St. Paul MSA is now less than **[begin confidential]** **[end confidential]** percent of the Minneapolis-St. Paul, Minnesota MSA. Qwest estimates this market share by employing the two-step procedure used in Appendix B of the *Verizon 6 MSA Order*, with one modification. As described more fully below in Section C., Qwest assumes that 13.6 percent of households have "cut-the-cord."[38]

Qwest has previously provided estimates for competitive LEC residential facilities-based access lines in the Minneapolis-St. Paul MSA.[39] As described below in Section B., Qwest updates that figure to **[begin confidential]** **[end confidential]**. Of those, Qwest

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maintain unbundling requirements on Qwest, which is one of several competitors. The Commission may not retain unbundling requirements where the evidence shows that the impairment standard is not met. *USTA I*, 290 F.3d at 422 (Commission may not impose unbundling "without regard to the state of competitive impairment in any particular market."). The fact that competitors can viably compete without UNEs "precludes a finding that the [competitors] are impaired by lack of access to the element under § 251(c)(3)." *USTA II*, 359 F.3d at 593 (internal quotation omitted).

[36] *TRO*, 18 FCC Rcd at 17136 ¶ 263.

[37] *Covad v. FCC*, 450 F.3d at 535.

[38] As described more fully below in Section C., the Centers for Disease Control now estimates that 13.6% of households exclusively subscribe to a mobile wireless service. This is a conservative estimate for the Minneapolis-St. Paul MSA, since as described in Section C., other data suggests that the proportion of wireless subscribers that have "cut-the-cord" in Minneapolis-St. Paul well exceeds the national average.

[39] *See* ¶ 25 of the Brigham/Teitzel Declaration.

estimates that more than **[begin confidential]** **[end confidential]** are provided by cable operators. In the event of a Commission request, Qwest would be willing to provide the Commission with specific numbers. Qwest takes a conservative, aggregated reporting approach here in light of public carrier challenges to the use and disclosure of carrier line information in the Verizon 6 MSA proceeding.

However, the Commission must understand that the white page listings data only allow Qwest to calculate an estimate of the rapidly increasing number of competitive LEC and cable telephony facilities-based lines for the Minneapolis-St. Paul MSA. This is especially so since customers of facilities-based telecommunications services providers may instruct their service providers not to submit their telephone numbers for inclusion in the white pages listings database, in which case white pages listings do not account for the existence of such customers at all. Ultimately, the most accurate source of cable operators' line counts is the cable operators themselves. Qwest therefore urges the Commission to obtain access line data from Comcast and Charter Communications as it did in the Verizon 6 MSA proceeding and as it obtained from Cox in the Omaha proceeding. Similarly, although the Commission chose not to verify other competitive LEC facility-based lines in the Verizon 6 MSA proceeding, Qwest believes that the Commission should take the simple step of verifying facility-based lines provided by the non-cable competitive LECs in the Minneapolis-St. Paul MSA. Ignoring this segment of the market results in an incomplete market analysis.

A. Qwest Access Lines

In the fifth paragraph of the Brigham/Teitzel Declaration, Qwest provided a table reflecting the dramatic decline in its retail residential, business and public coin access line base in the Minneapolis-St. Paul MSA between December 2000 and December 2006. Table 1 below updates that data and shows that between December 2006 and December 2007 Qwest has experienced even further losses across all categories of retail access lines in the Minneapolis-St. Paul MSA as competitive forces continue to intensify in that market.

Table 1

Decrease in Qwest Retail Access Lines in the Minneapolis-St. Paul MSA
December 2006 to December 2007

----------------------------------Begin Confidential-----------------------------------

Retail Service	Dec. 2006	Dec. 2007	Difference	% Decrease
Residential				%
Business				%
Public				%
Total				%

----------------------------------End Confidential-----------------------------------

B. Facilities-Based Competitive LEC Lines

In paragraph 25 of the Brigham/Teitzel Declaration, Qwest included an estimate of the number of business lines and the number of residential lines that were provided by facilities-based competitive LECs[40] in the Minneapolis-St. Paul MSA rate centers as of January 2007. As explained in the referenced paragraph, these estimates were derived using white pages listings. Table 2 below updates this data and shows that the estimated number of business and residential lines provided by facilities-based competitive LECs has grown substantially since January 2007. The strong growth in residential facilities-based competitive lines in the past year is due in large part to the highly aggressive marketing efforts of both Comcast and Charter Communications in the Minneapolis-St. Paul MSA.[41]

[40] Qwest defines "facilities-based" as used in this estimate at paragraph 25 of the Brigham/Teitzel Declaration and in footnote 25 of its reply comments. *See* Reply Comments of Qwest, WC Docket No. 07-97, filed Oct. 1, 2007 at 10 n.25.

[41] In fact, Comcast recently proclaimed itself as this country's fourth largest phone service provider. *See* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=721, Move Over Bells: Comcast Corporation Becomes The Fourth-Largest Phone Service Provider In The U.S., rel. Jan. 8, 2008.

Table 2

Growth in ***Competitive LEC Facilities-Based*** Lines in the Minneapolis-St. Paul MSA
January 2007 to December 2007
As Estimated from White Pages Listings

--**Begin Confidential**------------------------------------

CLEC Facilities-Based Service	Jan. 2007	Dec. 2007	Difference	% Increase
Residential				%
Business				%
Total				%

---------------------------------**End Confidential**-----------------------------------

C. "Wireless-Only" Households

Qwest notes the substantial growth in "wireless only" households (*i.e.*, those households that have disconnected wireline telephone service and now rely exclusively on wireless service for their telecommunications needs). At the time Qwest filed its petition, the National Center for Health Statistics ("NCHS") -- the research source for the data relied upon by the Commission regarding wireless substitution[42] -- had just released a report showing that the proportion of households nationwide that had "cut-the-cord" increased to 9.6 percent as of June 2006.[43] Consistent with its past reliance upon the NCHS wireless substitution data, the Commission once again relied upon the most recent NCHS data available in the *Verizon 6 MSA Order*.[44] The Commission observed that the research from the NCHS for the second half of 2006 showed that 12.8 percent of households were exclusively subscribing to a mobile wireless service, and it used that statistic in the calculation of market share detailed in Appendix B of the *Verizon 6 MSA Order*.[45]

[42] The National Center for Health Statistics is an organizational component of the Centers for Disease Control.

[43] *See* ¶ 40 of the Brigham/Teitzel Declaration.

[44] *See Verizon 6 MSA Order*, 22 FCC Rcd at 21323, Appendix B, n.2.

[45] *Id.*

On December 10, 2007, the NCHS released its preliminary estimates of wireless substitution for the first half of 2007.[46] According to the NCHS report, this "cord cutter" group had grown to an estimated ***13.6 percent*** by June 2007 -- an increase of four full basis points from June 2006 and nearly one full basis point from December 2006. Further, in its recently released report on the status of wireless competition the Commission acknowledged that, at 15.2 percent, Minneapolis-St. Paul had the second highest rate of wireless substitution among the 20 largest U.S. cities.[47] Given this trend, and coupled with the fact that the NCHS' estimate of wireless substitution is based on data from the *first half of 2007* rather than year-end data, Qwest believes 13.6 percent is an especially conservative estimate of households in the Minneapolis-St. Paul MSA that have "cut-the-cord" as of December 2007. As further support for this conclusion, Qwest notes that the Telephia research referenced by the Commission in paragraph 248 of its wireless competition report released February 4, 2008, indicated that the proportion of Minneapolis-St. Paul households that had cut-the-cord stood at 15.2 percent *as of the second quarter of* 2006 – when the national average was 9.6 percent.[48] As of July 2006, U. S. Census data shows that there were approximately 1.26 million households in the Minneapolis-St. Paul MSA.[49] Therefore, applying the most current national average "cord cutter" estimate of 13.6 percent -- which Qwest considers to be very conservative for Minneapolis-St. Paul -- to the total number of households in the MSA indicates that approximately 171,000 households have completely replaced their wireline service with wireless service in the Minneapolis-St. Paul MSA.

D. Wholesale Voice Grade Equivalent Lines Purchased by Competitive LECs

As explained in paragraph 24 of the Brigham/Teitzel Declaration, Highly Confidential Exhibit 2 provided the total quantity of Qwest wholesale services purchased by competitive LECs in each Minneapolis-St. Paul MSA wire center as of December 2006, segmented by residential and business line categories. The attached update to Highly Confidential Exhibit 2 demonstrates that the number of competitive LEC lines provided in the Minneapolis-St. Paul MSA via Qwest's wholesale products has increased between December 2006 and December 2007.

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[46] Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January -- June 2007, rel. Dec. 10, 2007.

[47] Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 07-71, Twelfth Report, rel. Feb. 4, 2008 at 109 ¶ 248.

[48] *See also* Brigham/Teitzel Declaration, Exhibit 5 at 4-5.

[49] *See* http://www.census.gov/popest/housing/HU-EST2006-4.html. The Minneapolis-St. Paul MSA encompasses Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright counties.

III. CONCLUSION

Qwest is continuing to lose access lines, and facilities-based competitive LECs are continuing to gain access lines. These competitive LECs had a particularly strong increase in residence access lines during 2007. Qwest's share of the mass market continues to fall as intramodal and intermodal competition continues to intensify. In light of this competition, it is clear that TELRIC rates are not necessary to ensure just and reasonable prices. These rates harm consumers, rather than protecting them, because disadvantaging Qwest by forcing it to share its facilities at artificially low rates undermines the potential for growth of facilities-based intramodal and intermodal competition. Eliminating unbundling at TELRIC rates would be in the public interest because the benefits are few, while the costs are significant. Where there is such robust facilities-based competition that does not rely upon Qwest's loop facilities, the Commission cannot justify continuing to impose the costs of unbundling and dominant carrier regulation.

Respectfully submitted,

/s/ Daphne E. Butler

APPENDIX

Minneapolis-St. Paul MSA - Estimated Residential Market Share

Step 1:

Qwest + CLEC = (1-.136) * $C_{telephone}$
Where,
$C_{telephone}$ = The total number of customers that have telephone service (wireline or wireless)
Qwest = Qwest residential local service customers
CLEC = Qwest Resold Lines + Qwest Residential Platform Service Lines (QLSP + QPP) + Cable Providers' [Estimated] Residential Access Lines

$C_{telephone}$ = (Qwest + CLEC)/(1-.136)

Qwest Residential	**Redacted**	(December 2007 data; see Section A)
CLEC Residential		
Qwest Residential Resold Lines	Redacted	(December 2007 data from updated highly confidential Exhibit 2)
Qwest Residential Platform-Based Lines	Redacted	(December 2007 data from updated highly confidential Exhibit 2)
75% of Estimated Facilities-Based CLEC Residential Lines	Redacted	(Based on December 2007 listings for Minneapolis-St. Paul MSA rate centers)
CLEC Total	**Redacted**	

$C_{telephone}$ = (Qwest + CLEC)/(1-.136)

Equals: **Redacted**

$Wireless_{CTC}$ = $C_{telephone}$ - Qwest - CLEC

Equals: **Redacted**

Step 2:

Estimated Qwest Market Share [$Qwest_{MS}$] = [Qwest + Qwest $Wireless_{CTC}$] / [Qwest + CLEC + $Wireless_{CTC}$]

Equals: **Redacted**

Estimated CLEC + Competitive Wireless Market Share = **Redacted**

Note: Qwest's estimated share of wireless in the Minneapolis-St. Paul MSA, per TNS Telecoms = **Redacted** (see footnote 18 in Brigham/Teitzel declaration)
Redacted Redacted Equals: **Redacted**

MINNEAPOLIS-ST. PAUL MSA
CLEC LINES PROVIDED VIA QWEST WHOLESALE PRODUCTS

		CLEC BUSINESS LINES					CLEC RESIDENCE LINES			BUSINESS + RESIDENCE				
Wire Center	CLLI8	UNE-L [1] (Dec.'07)	EEL [1] (Dec.'07)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. A thru Col. D)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. F + Col. G)	UNE-L [1] (Dec.'07)	EEL [1] (Dec.'07)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. I thru Col. L)
		A	B	C	D	E	F	G	H	I = A	J = B	K = C + F	L = D + G	M
BRAHAM	BRHMMNBR													
CAMBRIDGE	CMBRMNCA													
NORTH BRANCH	NBRNMNNB													
RUSH CITY	RSCYMNRC													
AFTON	AFTNMNAF													
STILLWATER	STWRMNST													
ANOKA	ANOKMNAN													
BLAINE	BLANMNBL													
BLOOMINGTON CEDAR	BLTNMNCE													
BLOOMINGTON NORMANDALE	BLTNMNNO													
BLOOMINGTON SOUTH	BLTNMNSO													
BROOKLYN CENTER	BRCTMNBC													
BUFFALO	BFLOMNBU													
BURNSVILLE	BRVLMNBU													
CLEVELAND	NWBTMNCL													
COON RAPIDS	CNRPMNND													
COTTAGE GROVE	CTGVMNCG													
CRYSTAL	CRYSMNCR													
EAGAN-LEXINGTON	EAGNMNLB													
EDEN PRAIRIE	EDPRMNEP													
ELK RIVER	EKRVMNER													
EXCELSIOR	EXCLMNEX													
FOREST LAKE	FRLKMNFL													
FRIDLEY	FRDLMNFR													
GLEN PRAIRIE	EDPRMNGP													
HAMEL	HAMLMNHB													
HANOVER	HNVRMNHB													
HOPKINS	HPKNMNHO													
ISANTI	ISNTMNIS													
MAPLEWOOD	MPWDMNMA													
MINNEAPOLIS 24TH AVE.	MPLSMNTF													
MINNEAPOLIS 66TH ST.	RCFDMN66													
MINNEAPOLIS 7TH AVE.	MPLSMN07													
MINNEAPOLIS BEARD	MPLSMNBE													
MINNEAPOLIS BRYANT	MPLSMNBB													
MINNEAPOLIS CENTRAL AVE.	MPLSMNGE													
MINNEAPOLIS DOWNTOWN	MPLSMNDT													
MINNEAPOLIS FRANKLIN	MPLSMNFR													
MINNEAPOLIS FT. SNELLING	MPLSMNFS													
MINNEAPOLIS PENN	MPLSMNPE													
MINNEAPOLIS PILLSBURY	MPLSMNPI													
NAVARRE	NVRRMNNA													
OAK GROVE	OKGVMNOG													
ORCHARD	GLVYMNOR													
PARK ROW	NSPLMNPR													

MINNEAPOLIS-ST. PAUL MSA
CLEC LINES PROVIDED VIA QWEST WHOLESALE PRODUCTS

		CLEC BUSINESS LINES					CLEC RESIDENCE LINES			BUSINESS + RESIDENCE				
Wire Center	CLLI8	UNE-L [1] (Dec.'07)	EEL [1] (Dec.'07)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. A thru Col. D)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. F + Col. G)	UNE-L [1] (Dec.'07)	EEL [1] (Dec.'07)	Platform-Based [2] (Dec.'07)	Resale (Dec.'07)	Total (Sum of Col. I thru Col. L)
		A	B	C	D	E	F	G	H	I = A	J = B	K = C + F	L = D + G	M
PLYMOUTH (FERNBROOK)	PLMOMNFE													
ROCKFORD	RCFRMNRO													
SHAKOPEE	SHKPMNSH													
SHOREVIEW RICE	SHVWMNRI													
SODERVILLE	SDVLMNSO													
ST. PAUL BEECH	STPLMNBE													
ST. PAUL EMERSON	STPLMNEM													
ST. PAUL FRONT ST.	STPLMNHB													
ST. PAUL MARKET	STPLMNMK													
ST. PAUL MIDWAY	STPLMNMI													
ST. PAUL WEST (OAKDALE)	WSPLMNWS													
WAYZATA	WYZTMNWA													
WHITE BEAR LAKE	WBLKMNWB													
TOTALS - MINNEAPOLIS-ST. PAUL MSA														

Note 1: Consistent with the methodology ordered by the FCC in its TRRO, wholesale DS1 services are counted at full capacity of 24 DS0s and DS3 services are counted at full capacity of 672 DS0s. Unlike with other wholesale categories, Qwest has no way of determining whether UNE-L and EEL lines are used by the CLEC to serve business customers or residence customers. Because Qwest believes these lines are predominantly being used to serve business customers, they are accounted for in the Business Lines section of this analysis.

Note 2: Platform-based lines shown in this column include the sum of QPP, QLSP and UNE-P lines.