

EX PARTE OR LATE FILED



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REDACTED – FOR PUBLIC INSPECTION

FILED/ACCEPTED

APR -2 2008

Federal Communications Commission  
Office of the Secretary

VIA COURIER

EX PARTE

April 2, 2008

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

CONFIDENTIAL

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix 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*. The type of confidential information included for comparison are estimates by Qwest of the number of households Qwest’s facilities pass as well as the estimated corresponding percentage that Cox’s cable network passes for residential lines and cable’s share of the mass market for telephone services in the Phoenix, Arizona Metropolitan Statistical Area (“MSA”).

The confidential information is submitted pursuant to the June 1, 2007 Second Protective Order (22 FCC Rcd 10129, DA 07-2292) in WC Docket No. 07-97. As required by the Second Protective Order, the *ex parte* with confidential information (that is, the non-redacted version) is marked **HIGHLY CONFIDENTIAL – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**. Pursuant to the Second Protective Order, Qwest requests that the non-redacted version of this *ex parte* (containing confidential information) be withheld from public inspection.

Qwest considers this highly confidential information as being extremely competitively-sensitive in nature. This type of information is “not routinely available for public inspection” pursuant to both Federal Communications Commission (“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 Phoenix, Arizona MSA) on April 27, 2007.

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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. 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 *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

Attachments

cc: (via e-mail)

Denise Coca ([denise.coca@fcc.gov](mailto:denise.coca@fcc.gov))

Jeremy Miller ([Jeremy.miller@fcc.gov](mailto:Jeremy.miller@fcc.gov))

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April 2, 2008

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 Phoenix, Metropolitan Statistical Area.*  
WC Docket No. 07-97

Dear Ms. Dortch:

In its consideration of Section 251 forbearance petitions for the Omaha, Anchorage, Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach areas, the Federal Communications Commission (“Commission”) examined the extent to which alternative service providers, and specifically cable service providers, offered service within the relevant geographic areas via non-incumbent local exchange carrier (“ILEC”) network facilities. In so doing, the Commission established a “coverage threshold test” as a metric to determine whether cable service providers could offer competitive voice telephone services to 75% of the end-user locations in the relevant geographic area within a commercially reasonable time.<sup>1</sup> To assist the

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<sup>1</sup> See *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, 19443 ¶ 57, 19444-45 ¶¶ 59-60 (2005), *pets. for rev. dismissed and denied on the merits*, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007); *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, 1977 ¶¶ 31-32 (2007), *appeals dismissed for lack of standing*, *Covad Communications Group, Inc. v. FCC*, Nos. 07-70898, 07-71076 and 07-71222 (9<sup>th</sup> Cir. 2007); *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance*

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Commission in its assessment of the merits of Qwest Corporation's ("Qwest") petition for forbearance in the Phoenix Metropolitan Statistical Area ("MSA"). Qwest has conducted further research into the extent to which cable television facilities "pass" customer locations within Qwest's service territory in the greater Phoenix market and offers such data herein for the Commission's consideration.

As an initial matter, it is important to note that granular data regarding "homes passed"<sup>2</sup> within Qwest's service territory is confidential information closely held by the cable Multiple Service Operators ("MSOs"), and as such, Qwest is not in possession of this confidential data. In establishing the "75% coverage" metric regarding end-user locations passed directly by Cox in the Omaha MSA,<sup>3</sup> the Commission utilized Cox's own confidential information to determine the proportion of the Omaha market that met the threshold. Subsequently, the Commission has similarly sought such confidential data from the cable MSOs in Anchorage as well as the six markets for which Verizon sought forbearance, and Qwest suggests that the Commission should follow the same course as it assesses Qwest's Phoenix MSA forbearance petition.

As discussed extensively in the Brigham/Teitzel declaration, Cox is the dominant cable MSO in the Phoenix MSA and has been highly aggressive in marketing its residential and business telephone services in that market. Cable MSOs are required by the Commission to publicly report in the Commission's Cable Operations and Licensing System ("COALS") database on an annual basis, via Form 325, the number of "households passed" by each cable system in operation in each state. Qwest has accessed the Commission's COALS database and has reviewed Cox's most recent Form 325 data submission for its Phoenix market to determine the extent to which the Cox data provides useful insights into the number of "households passed" by Cox's cable network in that area. Since cable MSOs are not obligated to report "homes passed" via the Form 325 process by MSA or by city within an MSA, a close correlation between the geographic area represented by the publicly-available Cox Form 325 data for its Phoenix cable system and Qwest's service area in the Phoenix MSA cannot be made. However, the Form 325 information Cox has publicly reported for its Phoenix system provides strong insight into the scope of its operations within the Phoenix MSA. As of December 2006 (well over one year ago), Cox reported to the Commission that the number of "potential subscribers" covered by its Phoenix cable system (Physical System ID 004818) was 1,573,380.<sup>4</sup> Cox reported

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*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, 21312 ¶ 36 (2007), pet. for rev. filed Jan. 14, 2008 (D.C. Cir. No. 08-1012).*

<sup>2</sup> It is Qwest's understanding that cable television service providers report a "home passed" to be a living unit that is located near the provider's existing cable infrastructure and that may be conveniently served within normal service provisioning intervals.

<sup>3</sup> Cox is the cable MSO serving the Omaha MSA.

<sup>4</sup> <https://fjallfoss.fcc.gov/csb/coals.intex.html>, Form 325, Reference Number 182357738, Section II.2.b. The terms "potential subscribers" and "homes passed" are synonymous on the

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on its “signal leakage” Report 320, also posted publicly at the Commission’s COALS website, that its Phoenix cable network (System ID 004818) encompasses the following communities: Phoenix, Paradise Valley, Tempe, Maricopa, Mesa, Chandler, Phoenix (NW), Peoria, Youngtown, Sun City, Ahwatukee, Buckeye, Litchfield Park, Sun Lakes, Scottsdale, Glendale, Mesa, Luke AFB, Surprise, Sun City West, Goodyear, Fountain Hills, Maricopa (West), Carefree, Maricopa (East), Gilbert, Apache Wells, Rio Verde, Tolleson, Maricopa (W), Avondale, El Mirage and Guadalupe.<sup>5</sup> This list of Cox-served communities comprises the vast majority of Qwest’s service area in the Phoenix MSA. It is interesting to note that the U.S. Census Bureau estimated the total number of housing units in 2006 in Maricopa County (which encompasses most of the Phoenix MSA) at 1,496,123. While direct comparisons between Cox’s publicly-reported data and Census Bureau data are not precise due to differences in geographical area encompassed by the reports, the data suggests that Cox’s network facilities pass a very high percentage of the households in the Phoenix MSA -- a percentage that is highly likely to be well above the Commission’s 75% coverage threshold.

The public data reported by Cox to the Commission regarding “households passed” is only reported at a system-wide basis for the Cox cable system serving its general Phoenix market. Therefore, Qwest does not have access to confidential Cox data to evaluate any variations in Cox network coverage at a lower level of geographic specificity. Qwest encourages the Commission to seek confidential, granular community-specific data from Cox for all communities it serves by its Phoenix system to verify the accuracy of Qwest’s observation that the 75% Cox network coverage threshold appears to have been generally exceeded in Qwest’s service area in the Phoenix MSA.

However, in an effort to determine the degree to which Cox cable facilities coverage exceeds the 75% threshold in certain Phoenix-area communities, Qwest was able to obtain non-confidential “homes passed” data, under the terms of the Freedom of Information Act (“FOIA”), reported by Cox to four municipalities in association with annual reporting requirements as a cable service franchise holder in those certain communities. These reports revealed that, as of November 2007, Cox’s cable facilities pass 595,543 households in Phoenix, 135,704 in Scottsdale, 74,746 in Gilbert and 74,746 in Chandler. In comparison, the number of households passed by Qwest’s network facilities in these four communities are: **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** in Phoenix (indicating that Cox’s network passes **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** of households passed by Qwest’s network in that city), **BEGIN HIGHLY**

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Commission’s Form 325. The FCC’s Form 325 input instructions define the number of potential subscribers as: “Total number of single family dwellings + total number of individual households in multiple dwelling units (apartments, condominiums, mobile home parks, etc.) for all locations with access to the existing cable plant (*i.e., homes passed*).” (emphasis added). See Form 325 Instructions, II. General Information, 2(b), December 2002.

<sup>5</sup> *Id.*

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**CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** in Scottsdale (indicating that Cox's network passes **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** of households passed by Qwest's network in Scottsdale). **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** in Gilbert (indicating that Cox's network passes **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** of households passed by Qwest's network in Gilbert) and **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** in Chandler (indicating that Cox's network facilities also pass over **BEGIN HIGHLY CONFIDENTIAL\*\*\*** **\*\*\*END HIGHLY CONFIDENTIAL** of the households passed by Qwest's network in that community)<sup>6</sup>. In these Phoenix MSA communities, the public Cox data Qwest was able to obtain indicates that the Commission's 75% cable facilities coverage threshold is easily met.

Respectfully submitted.

/s/ Daphne E. Butler

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<sup>6</sup> Qwest's "households passed" data includes residential and business premises, whereas Qwest believes that the Cox "households passed" data includes only residential premises. If business premises passed by Cox's network facilities were included in the Cox totals, the percentages of "households passed" by Cox cable facilities would be higher than those expressed above.

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