PRESENTATION REGARDING QWEST PETITIONS FOR FORBEARANCE FROM DOMINANT CARRIER AND UNBUNDLING REGULATION IN THE DENVER, MINNEAPOLIS, PHOENIX, AND SEATTLE MSAS
WC Dkt. No. 07-97
(May 15, 2008)

I. THE INFORMATION REGARDING COMPETITION PROVIDED BY QWEST IN SUPPORT OF ITS PETITIONS IS EITHER IRRELEVANT OR UNRELIABLE

A. Qwest's Reliance On White Pages As A Proxy For Access Lines Served Is Misplaced.

1. Qwest's market share calculations based on white pages include lines served via UNE loops and Qwest special access loops, making the market share estimates irrelevant: "**<u>while Verizon can demonstrate a fair amount of retail enterprise competition using Verizon's special access services and UNEs, competition that relies on [the ILEC's] own facilities is not sufficient to grant forbearance from UNE requirements</u>**." *6 MSA Order* ¶ 42.

2. White Pages Listings Are An Unreliable Proxy For Access Lines Served.

   a. Qwest's assumption that other carriers have the same access lines-to-white page listings ratio is not reliable: e.g., Qwest states that it has a 75 percent ratio for residential customers (*see, e.g.,* Phoenix Pet. at 10), but Verizon has stated that its ratio is 99 percent for residential customers (*see* Verizon Rhode Island Pet. at 11-12).

   b. Cbeyond, Integra, One Communications, and Time Warner Telecom do not track the ratio of access lines-to-white pages; it would be very difficult to obtain this information in general; it would be especially difficult to obtain this information for specific locations served *via* non-ILEC loops; it would therefore be very difficult to verify the accuracy of Qwest's assumptions as they apply to CLECs.

C. Qwest's Reliance On General Statements Of Cable Network Coverage And Cable Telephony Market Share Nationally, Press Releases And Websites Describing Services Offered, Media Coverage Maps (*e.g.,* Cox in Phoenix), Announcements Regarding Cable Executives' Focus On The Business Market (*e.g.,* Cox business marketing division) Is Misplaced. In the *6 MSA Order*, the Commission rejected Verizon's reliance on exactly this type Of information. *See 6 MSA Order* ¶ 40.

D. Qwest's Reliance On Aggregate Fiber Miles Deployed By Competitors And The Number Of Wire Centers In Which Competitors Offer Service Is Misplaced.

Again, the FCC rejected Verizon's reliance on this type of information in the *6 MSA Order*. *See id.*

E. Qwest's Reliance On The Presence Of Competitors Using Special Access Is Without Merit.

1. As the Commission held in the *6 MSA Order*, **"[f]or the reasons set forth in the *Triennial Review Remand Order*, the Commission already has rejected the argument that use of special access, in itself, is a reason to forbear from UNE obligations**." *Id.* ¶ 38.

2. Qwest makes no attempt to differentiate special access lines used exclusively to provide interexchange or mobile wireless service from those used to provide local service.

3. Qwest's assertion that competitors purchased more VGEs as special access circuits than UNEs is of questionable relevance.

   a. Qwest does not indicate whether the aggregate special access VGEs at issue include those used to provide exclusively mobile wireless or exclusively interexchange service.

   b. Qwest fails to indicate whether its aggregate special access VGEs at issue include capacities of services not available as UNEs or include circuits in locations where a carrier has exceeded the permitted number of DSn UNE loops or transport or in which UNEs are unavailable because the impairment trigger has been met.

4. In any event, relative volumes of UNEs and special access are irrelevant: "**We disagree with Verizon's argument that forbearance could be justified based simply on the claim that competitors overall primarily are using special access rather than UNEs when providing service over Verizon's facilities**." *Id.* The same conclusion is warranted here with regard to Qwest.

F. Qwest's Reliance On The Presence Of Over-The-Top VoIP Providers Is Misplaced. Over-the-top VoIP providers offer an application, not a physical connection to the home or business; they are therefore irrelevant to the question of whether unbundling obligations for local loops and transport should be retained.

G. Qwest's Reliance On The Decline In Its Retail Lines Is Without Merit.

1. The Commission has deemed line loss irrelevant to the UNE forbearance analysis. *See id.* ¶ 39.

2. As information recently submitted in the record by Qwest shows, customers disconnect service for many reasons other than competition

3. Qwest makes no attempt to account for the percentage of lines lost to competitors that themselves rely on UNEs or special access.

4. The TNS studies proffered by Qwest are inapposite:

   a. One study measures carriers' share of the residential telecommunications marketplace by "connections": voice, xDSL and mobile. The TNS study includes all (not just cut-the-cord) mobile wireless connections in the analysis and therefore, it is inconsistent with past FCC orders because its methodology artificially increases the level of competition Qwest faces in the wireline market because by including thousands of competitor wireless connections that should not be included.

   b. The second study measures carriers' share of the small business and enterprise markets by each carrier's revenue share; but this study makes no attempt to account for the extent to which competitors that have gained market share are relying on UNEs and Qwest special access facilities.

5. In all events, the market share analysis should focus on more reliable information than past line losses: actual market share of facilities-based competitors.

H. Qwest's Reliance On Data From GeoTel Regarding The Total Number Of Buildings In The Four MSAs Served By Competitors' Fiber Is Misplaced. Qwest has not provided any description of the methodology used by GeoTel to establish this data and this data is also inconsistent with the data recently submitted in the record from GeoResults regarding the number of buildings lit by competitors.

II. THE COMMISSION SHOULD NOT INCLUDE LINES SERVED *VIA* QPP/QLSP OR RESALE IN THE CALCULATION OF FACILITIES-BASED COMPETITORS' MARKET SHARE

A. QPP/QLSP Offerings Include UNE Loops And Should Therefore Not Be Considered.

1. "**<u>With the exception of Omaha . . . QPP/QLSP relies upon an unbundled loop</u>**." Phoenix Pet. at n. 21.

2. The Commission has appropriately stated that it will not rely on UNE-based competition as the basis for eliminating UNEs (*see, e.g., 6 MSA Order* ¶¶ 37, 42).

3. The Commission should not therefore consider QPP/QLSP competition when assessing UNE forbearance petitions.

B. Resale-Based Competition Is Qualitatively Different From, And Yields Far Fewer Consumer Benefits Than, UNE-Based Competition; The Commission Should Not Therefore Consider Resale Competition When Assessing UNE Forbearance Petitions.

1. Resellers cannot innovate, whereas UNE-based competitors can and do.

   a. Resellers have essentially no ability to innovate by offering new services because they can only offer the services already made available by the ILEC.

   b. In contrast, UNE-based competitors can combine ILEC loop/transport facilities with their own electronics to provide new and higher quality services such as integrated access DS-1-based services.

2. Resellers cannot impose price discipline on ILECs, whereas UNE-based competitors can and do.

   a. Resellers cannot discipline ILEC pricing because they can only offer their services at a discount (avoided cost) off of the ILEC's retail price; thus, if the ILEC increases its retail prices, the reseller has no choice but to increase its prices as well.

   b. In contrast, UNE-based competitors purchase ILECs' loop and transport facilities at cost-based prices and can introduce lower costs by combining ILEC facilities with the competitors' own, lower-cost equipment; as a result, UNE-based competitors can and do offer service at prices below those charged by ILECs.

3. “[C]arriers using solely unbundled elements, compared with carriers purchasing services for resale, **will have greater opportunities to offer services that are different from those offered by incumbents**.” *Local Competition Order* ¶ 332.

4. “More specifically, **carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail**.”

5. “**The ability of a reseller to differentiate its products based on price is limited, however, by the margin between the retail and wholesale price of the product**.” *Id.*

6. When using UNEs, “[t]he ability to package and market services in ways that differ from the incumbent's existing service offerings **increases the requesting carrier's ability to compete against the incumbent and is likely to benefit consumers**.” *Id.* ¶ 333.

III. THE COMMISSION SHOULD FOLLOW SOUND COMPETITION POLICY PRINCIPLES IN ANALYZING THE RELEVANCE OF CUT-THE-CORD WIRELESS CUSTOMERS

A. There Is No Evidence That Mobile Wireless Service Belongs In The Wireline Mass Market Voice Product Market; The Commission Itself Recognized This Fact Just Two Weeks Ago:

1. **“[T]he majority of households do not view wireline and wireless services to be direct substitutes**.” *CETC Interim Cap Order* ¶ 21

2. In reaching this conclusion, the Commission rejected CTIA’s use of the CDC May 2007 Survey relied upon by the Commission in the *6-MSA Order* as evidence that mobile wireless is a substitute for wireline voice service. **As the Commission explained in rejecting CTIA’s argument, the CDC May 2007 Survey’s finding that nearly 13 percent of the population has cut the cord “fails to demonstrate that wireless ETCs are a complete substitute for wireline ETCs**.” *See id.* n.63.

3. While the recent CDC May 2008 Survey shows a slight uptick in the rate at which customers cut the cord, there is no basis for concluding that this survey data would alter the conclusions reached by the Commission earlier this month.

4. In all events, **there is no evidence that the availability of wireless service would constrain a hypothetical wireline monopolist’s ability to unilaterally impose a “‘small but significant and nontransitory’ increase in price” on those customers that subscribe to wireline service today**.

    a. Customers that have cut the cord in the past are irrelevant to the analysis because the question is whether a hypothetical monopolist could increase prices paid by existing wireline customers.

    b. According to a Verizon survey, most existing wireline customers do not view wireline and wireless as substitutes: **83 percent of landline subscribers “intend to continue using their landline home phone indefinitely.”** Fully 94 percent of the survey respondents cited reliability and 91 percent cited safety as the primary reasons they retain wireline service. Seventy-four percent of those surveyed reported that their landline home phone service “trumped their mobile phone in terms of voice quality, reliability, and consistency of service.” *See* Cbeyond et al. May 7, 2008 *Ex Parte* at 6-7.

c. Reasons cited by the FCC in the *Verizon/MCI Merger Order* for including mobile wireless in the wireline voice market are without merit.

B. Even If Mobile Wireless Service Does Belong In The Wireline Mass Market Voice Product Market, Services Offered By ILEC-Affiliated Mobile Wireless Providers Both Inside And Outside Their ILEC Territories Should Be Excluded From The Product Market.

1. Both Verizon Wireless and AT&T Mobility market and price their services the same way throughout the country.

2. These national pricing plans are evidence that AT&T Mobility and Verizon Wireless market and price their services outside of their ILEC territories in the same way that they market and price their services within their ILEC territories.

3. Accordingly, if the Commission does not view ILEC-affiliated mobile wireless service as a wireline substitute within the ILEC territory (the conclusion reached in the *6 MSA Order*), it must treat them the same way when offering service outside of the ILEC territory.

C. Under No Circumstances Should Mobile Wireless Service Be Deemed A Substitute For Wireline Data Services Such As ADSL, DS1s and DS3s.

1. It is clear that Qwest views itself to be unconstrained by any competition in the provision of xDSL service.

2. **<u>Qwest CEO Ed Mueller recently stated that Qwest views demand for its wireline data services to be "inelastic" and that it plans to increase prices for these services by as much as 11 percent</u>** (*see* attached article).

IV. FORBEARANCE SHOULD NOT BE GRANTED FOR UNEs NEEDED TO SERVE BUSINESS CUSTOMERS UNLESS THE ILEC MEETS THE RELEVANT NETWORK COVERAGE AND MARKET SHARE TESTS IN THE BUSINESS MARKET

A. As The Commission Recognized In The *6 MSA Order* (*see* ¶ 37, n. 118), Forbearance From Loops And Transport UNEs Needed To Serve Business Customers Should Not Be Granted Unless Facilities-Based Competitors' Network Coverage In The Business Market Exceeds 75 Percent In A Particular Wire Center.

B. As The Commission Also Implicitly Recognized In The *6 MSA Order* (*see* ¶ 37), Forbearance From Loops And Transport UNEs Needed To Serve Business Customer Should Not Be Granted Unless Facilities-Based Competitors Have Achieved Sufficient Market Share (The Commission Has Made Public Its Preference For 50 Percent As The Cut-Off Point) In The Retail Market For Business Services.

V. THE COMMISSION SHOULD REASSESS ITS FRAMEWORK FOR ANALYZING WHOLESALE COMPETITION

A. The Commission's Existing Framework For Analyzing The Wholesale Market In UNE Forbearance Proceedings Is Based On Guesswork.

1. The Commission has predicted that, where there are "very high levels of retail competition that do not rely on the [ILEC's] facilities -- and for which [the ILEC] receives little to no revenue" the ILEC has "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]." *Qwest Omaha Order* ¶ 67.

2. This prediction is based on numerous assumptions that may or may not be correct, but the Commission has never adequately analyzed these issues. Most importantly, does the presence of a *single* facilities-based competitor with significant market share in the voice market actually give an ILEC the incentive to offer service to wholesale third-party competitors?

B. The Commission Has Failed To Apply Its Wholesale Analytical Framework In The Business Market.

1. If "very high levels of retail competition that do not rely on the ILEC's facilities" are necessary to give the ILEC an incentive to offer loops and transport on reasonable terms and conditions, then this must be true for loops and transport needed to serve business customers.

2. For this reason as well, proof of significant levels of retail competition in the provision of ADSL used by small businesses and DS1/DS3-based services should be required before forbearance from unbundling is granted for DS0 loops used to provide xDSL, DS1 or DS3 loops.