

May 30, 2008

Ex Parte

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

Re: *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix Metropolitan Statistical Area, Denver Metropolitan Statistical Area, Minneapolis Metropolitan Statistical Area, and Seattle Metropolitan Statistical Area, WC Docket No. 07-97*

Dear Ms. Dortch:

On May 29, 2008, Paul Kenefick, Vice President, Public Policy, EarthLink Inc. ("EarthLink") and I, on behalf of EarthLink, met with John W. Hunter, Special Counsel, Wireline, to Commissioner Robert M. McDowell.

We made the point that under the FCC's precedent to date, Qwest is not entitled to forbearance in any of the four MSAs subject to its petitions. UNEs remain critical to EarthLink providing its unique Line Powered Voice and ADSL2+ services, which give consumers both a voice and broadband alternative to Qwest and the cable company. Moreover, EarthLink cannot provide these services independent of the ILEC using either Qwest's resale or QPP products. In addition, the availability of DSL from UNE-based providers is critical to EarthLink when negotiating commercial deals with ILECs even for basic DSL-based internet access.

We also provided Mr. Hunter with a copy of the attached documents.

Sincerely,


John T. Nakahata

Counsel to EarthLink, Inc.

cc: John W. Hunter

Attachment

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WHAT STATES ARE SAYING REGARDING QWEST'S 4-CITY FORBEARANCE PETITIONS

What's at issue? Qwest filed petitions to end federal protections on telephone rates AND the rates they charge competitors who lease copper loops (UNE-L).

- Qwest Petition affects **13 million Americans** or 4.6 million households in broad areas surrounding **Seattle, Minneapolis, Denver and Phoenix**.
- The FCC must deny the petitions or they are **AUTOMATICALLY GRANTED**.
- The FCC in December 2007 rejected **in full** a virtually identical petition filed by Verizon in the cities of Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach. Qwest's petition is as meritless as Verizon's.

What is the IMPACT? For 13 million Americans, consumer and business rates would GO UP for phone and broadband service. New broadband adoption would slow down.

What are the affected States saying? Every State is telling the FCC that the way to protect consumers and phone and broadband choices is to tell Qwest, "No!" –

Colorado Public Utilities Commissionⁱ

- "[P]remature forbearance will permanently arrest the development of an effectively competitive market" allowing Qwest to "solidify its domination through a number of means characteristic of a tight duopoly or oligopoly."
- "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."
- "[T]ight duopoly, which would develop if forbearance is granted, will not provide the benefits of competition contemplated in the 1996 Act and in economic literature"
- "Qwest is still the monopoly wholesale provider."
- "It is neither necessary nor desirable to damage existing UNE-based competition by eliminating the unbundling requirement" because "UNEs remain a necessary cog to cultivate competition in the local exchange markets in the Denver MSA."
- "Unless regulation remains in place in one form or another – such as a price cap – tacit collusion and joint market dominance likely will occur between Qwest and Comcast sharing a *de facto* monopoly. Neither consumers nor businesses in the Denver MSA will benefit from such an arrangement."

Colorado Office of Consumer Counselⁱⁱ

- "Qwest's Denver Petition...is about allowing Qwest the opportunity to raise its prices to competitive local exchange carriers...practically drive that competitive alternative from the market, and then raise its own prices." This will have the "practical effect of harming consumers."

WHAT STATES ARE SAYING REGARDING QWEST'S 4-CITY FORBEARANCE PETITIONS

- “Qwest’s Denver Petition should be denied because such forbearance is not in the public interest, that continued regulatory enforcement is necessary to protect consumers, and because Qwest has failed to meet the statutory requirements.”
- “Qwest is seeking from the FCC, via the Qwest Denver Petition. . . what was denied by the Colorado Commission – arguably the jurisdictional entity with the best institutional and localized knowledge of Qwest and its operations in the Denver MSA, and consequently, in the best position to render a decision.”
- Grant of forbearance “will result in further carnage in the wireline CLEC environment and will remove existing ‘constraints [on] Qwest’s ability to raise its prices or otherwise harm consumers.’”

Minnesota Public Utilities Commissionⁱⁱⁱ

- The “MNPUC has grave concerns regarding Qwest’s MSP Petition and urges the Commission to deny Qwest’s petition” because “the scope of the relief Qwest requests would substantially impede or entirely eliminate telecommunications competition in the MSP MSA.”
- “When granted forbearance in portions of the Omaha MSA, Qwest raised its rates for [ordinary] Loops quite significantly. If granted forbearance in the [Minneapolis-Saint Paul] MSA, Qwest may raise rates in Minnesota as it did in Omaha.”
- Forbearance would lead to a “Qwest/Comcast duopoly, generating little confidence that competitive forces will be robust and lasting.”
- “[S]hould Qwest’s MSP Petition be granted.... any misjudgement in the granting of Qwest’s [Minneapolis-Saint Paul] Petition may be catastrophic, irreversible.”
- “[M]any Minnesota CLECs may withdraw entirely from the market should Qwest’s [Minneapolis-Saint Paul] Petition be granted.”

Arizona Corporation Commission^{iv}

- “[T]here is not presently sufficient competition by Cox . . . to support forbearance.”
- The residential market is “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.”

Washington Utilities and Transportation Commission^v

- Granting Qwest’s Seattle region petition “would substantially impede or entirely eliminate intra-modal telecommunications competition in the Seattle MSA.”
- “The [Washington Utilities and Transportation Commission] has grave concerns regarding the scope of Qwest’s Seattle Petition and the adverse effects it will have on competition if granted in whole.”

WHAT STATES ARE SAYING REGARDING QWEST'S 4-CITY FORBEARANCE PETITIONS

- “[T]he vast scope of the relief Qwest seeks in the Seattle Petition, if granted, would undercut very foundation and delicate balance of the UTC’s past decisions regarding reduced or streamlined state regulation of Qwest’s services.”

Washington State Attorney General’s Office^{vi}

- Qwest’s Seattle region petition “would reduce the level of competition in the Seattle MSA and would not be in the public interest.”
- Forbearance would “significantly reduce the level of competition in the Seattle MSA” and would be “very disruptive” and “would in no way promote the public interest.”
- If “the FCC were to remove Qwest’s unbundling obligation, it would in effect be allowing Qwest to further extend its market power over its retail dedicated and switched services and to do so virtually unconstrained by competition.”
- “The continued enforcement of the pro-competitive unbundling obligations of federal law is necessary to ensure that consumers, particularly business customers, have access to reasonably priced competitive alternatives.”
- Forbearance would mean “Qwest would be able to charge unjust and unreasonable rates to competitors and that business consumers would lose competitive options.”
- Forbearance would have a distinctly negative impact on CLECs, and “[c]ustomers can only suffer in such an environment.”

ⁱ The full text of the Colorado PUC’s comments can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721184.

ⁱⁱ The Colorado Office of Consumer Counsel is a state government agency that represents “the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers and small business consumers. The full text of the comments of the Colorado Office of Consumer Counsel can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721321 and http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519738947.

ⁱⁱⁱ The full text of the Minnesota PUC’s comments can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519840341.

^{iv} The full text of the Arizona Corporation Commission’s comments can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721311 and http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519739017.

^v The full text of the Washington Utilities and Transportation Commission’s comments can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519717767.

^{vi} The full text of the Washington Attorney General’s comments can be found at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519721240.