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June 10, 2008

VIA ECFS

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

Re: *Notice of Ex Parte Presentation*: In the Matter of 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

REDACTED FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Yesterday, Heather Gold, of XO Communications, LLC, Angela Simpson, of Covad Communications Group, and Brad Mutschelknaus and the undersigned, of Kelley Drye & Warren, LLP, met with Scott Deutchman, Legal Advisor to Commissioner Michael Copps. During that meeting, we presented information addressing the steps that must be met before forbearance is justified and showing that forbearance is not warranted in the above-captioned proceeding. Attached to this *Notice of Ex Parte Presentation*, is a redacted version of the presentation provided at the meeting.

In accordance with paragraph 14 of the *Second Protective Order*, dated June 1, 2007 (DA 07-2293) in the above-captioned proceeding, a copy of the presentation, containing Highly Confidential information is being submitted to your attention under separate cover.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
June 10, 2008
Page 2

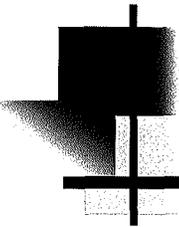
Kindly date stamp the duplicate of this letter and return it to the courier. Please contact the undersigned at (202) 342-8531, if you have any questions about this letter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Genevieve Morelli". The signature is written in black ink and is positioned above the printed name.

Genevieve Morelli

Enclosures



**PETITIONS OF QWEST CORP. FOR FORBEARANCE
IN THE DENVER, MINNEAPOLIS-ST.PAUL,
PHOENIX, AND SEATTLE MSAs**

**WC DOCKET NO. 07-97
June 9, 2008**

**Covad Communications
NuVox Communications
XO Communications**

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Section 251(c) Forbearance Framework

■ Step 1

- Qwest must show successful competition in the aggregate in each MSA
 - Competition must be evaluated separately for each relevant product market
 - Extreme vigor in analyzing the mass market, enterprise market, and broadband market is warranted
 - Competition must be facilities-based
 - QPP, resale, UNE, special access, and over-the-top VoIP lines do not qualify

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Section 251(c) Forbearance Framework

- Step 1 (cont'd)
 - Must be more than one facilities-based competitor serving the MSA
 - The duopoly that would result if only one facilities-based competitor would be contrary to the public interest
 - Facilities-based competitors must be providing substitutable services in the relevant product market

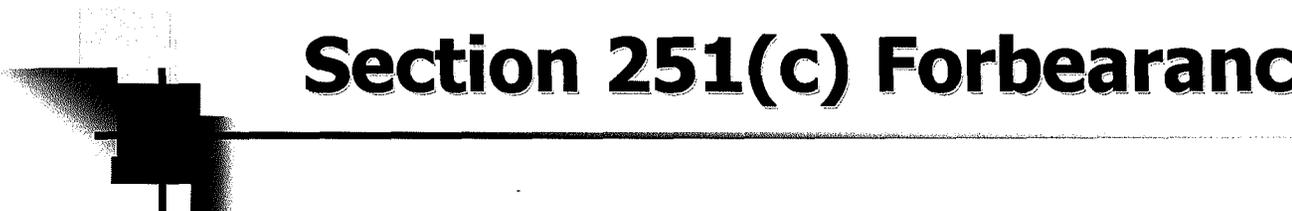
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Section 251(c) Forbearance Framework

Step 2

- If the Step 1 analysis meets the established threshold, a more granular analysis must be conducted
- For each product market, competitors' facilities-based coverage by wire center must be ascertained
 - Facilities must be able to be used to provide substitutable services in the relevant product market within a commercially reasonable period of time

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Section 251(c) Forbearance Framework

- Step 3
 - For each wire center that meets the coverage threshold (*i.e.*, 75%), the level of actual facilities-based competition in that wire center must be ascertained
- Step 4
 - Other Section 10 criteria must be satisfied

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Qwest Has Not Established That Sufficient Competition Exists In Any Product Market

- Qwest has not produced appropriate or sufficient product market-specific data
 - Data for the enterprise market consists of a single survey estimating Qwest's "revenue share"
 - Relies on anecdotal material
 - Unlike *Omaha*, this record has specific data showing insignificant competitive market share of enterprise customers
 - Data for the mass market addresses only a subset of the market
 - Residential only; small business ignored
 - No broadband market data filed

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The Mass Market Data Produced By Qwest Is Fundamentally Flawed

- Qwest erroneously includes non facilities-based lines (*e.g.*, QPP and resale) in its analysis
- Qwest admits its data are only estimates that cannot substitute for actual line count data
 - Qwest concedes that actual cable data is required both for accurate market share and coverage test calculations

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The Mass Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- Wireless lines should be excluded from the analysis
 - Wireless lines today are not a complete substitute for wireline services in any product market
 - Most households do not regard wireline and wireless to be direct substitutes (*Order*, CC Docket No. 96-45, ¶21, May 1, 2008)
 - Economists, Inc. paper establishes that wireline and wireless constitute separate product markets
- If wireless lines are included, their inclusion must be significantly limited
 - residential voice market
 - Gillan Associates adjustments to CDC data must be made

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The Mass Market Data Produced By Qwest Is Fundamentally Flawed (Cont'd)

- Wireless data used by the Commission must be from a neutral third party
 - If the CDC Survey is used, adjustments must be made
 - Adjustments to the CDC Survey results suggested in the Gillan Associates paper must be adopted
 - Use of the lower bound of the 95% confidence interval
 - Identifiable groups that are not representative of the population as a whole should be excluded
 - College-age respondents should be excluded
 - Telephia survey is not a reliable source

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Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- An aggregate market share for the enterprise market must be ascertained
- GeoResults is a neutral source for data on the extent of facilities-based competition in the enterprise market
 - GeoResults data for the 4 MSAs at issue has been obtained by the competitors
 - XO has filed its own facilities penetration data, which confirms the GeoResults industry-wide analysis

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CLECs Connect with Their Own Facilities to a Miniscule Percentage of Commercial Buildings in the Affected MSAs

MSA	Total Number of Commercial Buildings in MSA	% of Commercial Buildings Served by Facilities-Based CLECs
Denver	104,385	0.24%
Minneapolis/ St.Paul	124,740	0.26%
Phoenix	127,763	0.17%
Seattle	127,880	0.18%

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**Even in the Most Competitive Wire Centers,
All CLECs Combined Connect with Their Own
Facilities to Very Few Commercial Buildings**

MSA	Wire Center with Highest Percentage of Commercial Buildings Served by Facilities-Based CLECs	Total Number of Commercial Buildings in Wire Center	Percentage of Commercial Buildings Served by Facilities-Based CLECs
Denver	ENWDCOMA	2433	2.28%
Minneapolis/ St.Paul	MPLSMNDT	1574	3.63%
Phoenix	PHNXAZSE	1095	1.46%
Seattle	STTLWAEL	666	3.15%

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No Commercial Building is Connected to CLEC Facilities in Approximately One-Half of Affected Wire Centers

MSA	Total Number of Wire Centers in MSA	Total Number of Wire Centers with no Buildings Served by Facilities-Based CLEC	Percentage of Wire Centers with no Buildings Served by Facilities-Based CLECs
Denver	47	20	43%
Minneapolis/ St. Paul	140	84	60%
Phoenix	76	39	51%
Seattle	69	30	43%

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All CLECs Combined Seldom Serve More Than 5% of the Addressable Market Using Their Own Facilities

MSA	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 0%-5%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 5%-10%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Between 10%-15%	Number of Wire Centers in MSA with Facilities-Based CLEC Addressable Demand Market Share Above 15%
Denver	41	3	3	0
Minneapolis / St.Paul	133	6	1	0
Phoenix	72	4	0	0
Seattle	66	2	1	0

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XO's Facilities-Based Penetration In The Enterprise Market Is Extremely Modest

[BEGIN HIGHLY CONFIDENTIAL]

MSA Name	Number of XO Lit Buildings	% of XO Lit Buildings
Denver, CO		
Minneapolis, MN		
Phoenix, AZ		
Seattle-Bellevue-Everett, WA		

[END HIGHLY CONFIDENTIAL]

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Most Commercial Buildings are Too Distant from CLEC Fiber Networks to Justify Construction of Laterals

[BEGIN HIGHLY CONFIDENTIAL]

MSA Name	% of Commercial Buildings Within 500 ft of XO Fiber	% of Commercial Buildings Within 1,000 ft of XO Fiber
Denver, CO		
Minneapolis, MN		
Phoenix, AZ		
Seattle-Bellevue-Everett, WA		

[END HIGHLY CONFIDENTIAL]

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Actual Facilities-Based Penetration In The Enterprise Market Is, At Best, Very Modest

- Qwest “fiber network” data does not show facilities-based competition in the enterprise market
 - Qwest fails to identify:
 - The fiber providers
 - Whether (and to what extent) the fiber is being used to provide telecom services
 - Whether the networks can support the full range of services within a commercially reasonable time
 - Qwest fails to acknowledge that passing a location does not necessarily mean the owner can provide service at that location

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Qwest Has Failed To Prove That Successful Competition Exists In Any MSA

- State regulators uniformly have stated that facilities-based competition in Arizona, Colorado, Minnesota, and Washington is not sufficiently robust to justify UNE forbearance
- Because Qwest has failed to show that successful competition exists at the aggregate (*i.e.*, MSA) level in any product market, its petitions must be denied

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Qwest Has Failed to Meet the Statutory Criteria for Forbearance

- Qwest has failed to show that enforcement is not necessary to ensure its charges and practices are just and reasonable and not unreasonably discriminatory
- Qwest has failed to show that the regulations at issue are not necessary to protect consumers
- Qwest has failed to show forbearance would further the public interest
- Qwest has failed to show that forbearance would enhance competitive market conditions

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