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VIA ECFS ***EX PARTE***

June 16, 2008

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 Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,*** **WC Docket No. 07-97**

Dear Ms. Dortch:

Earlier today, Greg Kennan of One Communications Corp, Don Shepheard of Time Warner Telecom Inc., and the undersigned met with Scott Bergmann, Legal Advisor to Commissioner Adelstein, regarding the above-captioned proceeding.

The participants discussed the merits of Qwest's petitions for forbearance and the reasons that the petitions should be denied. A copy of the presentation document and the news article on which these discussions were based is attached.

Please do not hesitate to contact me if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

Counsel for One Communications Corp. and Time Warner Telecom Inc.

cc (via email): Scott Bergmann

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
(June 16, 2008)

I. 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.

II. THE COMMISSION MUST APPLY ITS OWN WHOLESALE STANDARD WITH SUFFICIENT RIGOR AND CONSISTENCY

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

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. The Commission has never actually examined whether the presence of a *single* facilities-based competitor with significant market share in the voice market actually gives 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. The logic of the Commission's own standard therefore dictates that 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.

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 Six 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 last 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. **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** (*see* attached article).

IV. 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. **"With the exception of Omaha . . . QPP/QLSP relies upon an unbundled loop**." Qwest Phoenix Pet. 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).

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

V. 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: "**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**." *6 MSA Order* ¶ 42.

2. White pages listings are an unreliable proxy for access lines served. Qwest relies on too many rough (and likely inaccurate) guesses regarding competitors' listings-to-lines ratios.

3. Integra's market share estimates among business customers in the four MSAs using directory assistance listings is more reliable than Qwest's white page-derived estimates.

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), And Announcements By Cable Executives Regarding Their Focus On The Business Market (*e.g.*, Cox's 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. 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.

F. Qwest's Reliance On The Presence Of Over-The-Top VoIP Providers Is Misplaced.

   1. 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, As Its Own Data Show.

H. Qwest's Reliance On Data From GeoTel Regarding The Total Number Of Buildings In The Four MSAs Served By Competitors' Fiber Is Misplaced.

   1. The data submitted by Time Warner Telecom and other competitors is more reliable (*i.e.*, the total TWTC on-net buildings in each MSA, percentage of total buildings in MSAs on-net, total buildings in each MSA that could meet TWTC's criteria for constructing loops, and percentage of total buildings in each MSA that could meet TWTC's criteria for building loops; GeoResults lit building data; number of buildings within 500 and 1,000 feet of XO's fiber network)

Rocky Mountain News (Denver, CO)
May 7, 2008 Wednesday
Qwest hiking prices during economic slump
BYLINE: Jeff Smith, Rocky Mountain News

Qwest Communications is raising the prices of some of its Internet services by as much as 11 percent as it struggles amid the current economic and housing slump.

The Denver telco is betting demand won't wane or, as prices of individual services go up, more customers will be spurred into subscribing to phone-Internet- television "bundles." Qwest also hopes to attract new customers as it triples Internet speeds in key markets this year.

Price increases came up during Qwest's first-quarter conference call Tuesday.

Qwest reported earnings of $157 million, or 9 cents a share, in the quarter, while revenues slipped 1.4 percent to $3.4 billion as the company continues to experience steep losses in its traditional land-line business. Qwest shares fell 6 percent.

An analyst on the investors' conference call noted that other telecommunications carriers are planning to hike prices of "core services." He wondered if Qwest would do the same.

"We will do price increases; that is our plan," Qwest CEO Ed Mueller responded. "We believe there is room in the market for the (increases) and where we can, we're taking them."

Qwest on April 20 increased its "Price for Life" rate for new high-speed Internet service customers by $3 a month, according to spokeswoman Kate Oravez.

The slowest tier of DSL now is $29.99 a month, up 11 percent from $26.99 a month, for customers who also have a Qwest home phone package. Customers who locked in the $26.99 "Price for Life" rate aren't affected.

Mueller said in a telephone interview that Qwest plans to target the prices of individual services, which he characterized as "cheap." He called such services "inelastic," meaning he doesn't believe demand will change much even if prices go up.

Donna Jaegers, a telecommunications analyst at Janco Partners in Greenwood Village, noted that Qwest over the years has subtly raised prices of selected services. "Longer term, it doesn't help them keep market share," Jaegers said. But she said it could help push consumers into more expensive bundles of communications services. And that, she said, "makes a stickier consumer," or one less likely to switch providers.

Qwest's average revenue per customer is up 7.8 percent from $51 a month to $55 a month because of sales of bundles.

Price hikes, though, come as Qwest's high-speed Internet growth is anemic, said Jaegers.

Qwest is trying to lure customers from cable companies by boosting Internet speeds to 12 and 20 megabits a second in key markets. Qwest tallied 13,000 new subscribers from those efforts in the first quarter, but the faster service is still available in only a few neighborhoods in the metro area.