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Federal Communications Commission
Office of the Secretary

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VIA COURIER

June 12, 2008

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

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

Dear Ms. Dortch:

On behalf of Cbeyond Inc., Integra Telecom, Inc., One Communications Corp. and Time Warner Telecom Inc., please find enclosed two copies of a redacted version of an *ex parte* letter for filing in the above-captioned docket. Pursuant to the First and Second Protective Orders in this proceeding, one copy of the confidential and highly confidential version is being filed with the Secretary's Office under separate cover, two hard copies of the confidential and highly confidential version will be provided to Gary Remondino, and one copy of the confidential and highly confidential version will be provided electronically to Denise Coca, Jeremy Miller, and Tim Stelzig.

Please do not hesitate to contact me if you have any questions with respect to this submission.

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Respectfully submitted,

Thomas Jones
Nirali Patel

Attorneys for Cbeyond Inc., Integra Telecom, Inc., One Communications Corp. and Time Warner Telecom Inc.

Enclosures

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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:

Cbeyond Inc., Integra Telecom, Inc., One Communications Corp. and Time Warner Telecom Inc.[1] (collectively, the "Joint Commenters"), through their undersigned counsel, respond in this *ex parte* to the confidential and highly confidential information submitted by Qwest in recent months in the above-captioned docket. As explained herein, neither Qwest's data regarding its access line losses nor Qwest's estimates of competitors' access lines based on white pages listings are reliable indicia of facilities-based competition in the four MSAs at issue. Accordingly, the Commission should reject Qwest's suggestion that either type of information supports its requests for forbearance in the Denver, Minneapolis, Phoenix, and Seattle MSAs.

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[1] Time Warner Telecom Inc. amended its Certificate of Incorporation effective March 12, 2008 to change its name to tw telecom inc. in preparation for a broader name change that will be effective July 1, 2008. The company will continue to use and be known as Time Warner Telecom Inc., its trade name, until July 1, 2008.

I. Qwest's Own Data Shows That Access Line Losses Are Not Reliable Indicia Of Facilities-Based Competition In The Relevant Markets.

Throughout this proceeding, Qwest has maintained that the decline in its retail business and residential access lines is evidence of growing competition in the relevant MSAs.[2] In the *Six-MSA Order*, the FCC rejected "Verizon's attempt to demonstrate the MSA is competitive by calculating the percentage reductions in retail lines." *Six-MSA Order* ¶ 39. The Commission did so because "the abandonment of a residential access line does not necessarily indicate capture of that customer by a competitor." *Id.*; *see also id.* ¶ 32. Here, Qwest provides no reason for the Commission to depart from this precedent.

To begin with, aggregate numbers of access line losses, by themselves, offer no evidence as to the level of facilities-based competition in the relevant market. In particular, they say nothing about the extent to which competitors have gained access lines by providing service *via* their own loop facilities, the core issue in this proceeding.

Furthermore, line loss totals do not even provide a reliable measure of competition in the aggregate (i.e., from facilities-based and non-facilities-based competitors). Qwest's own responses to one of the FCC's recent information requests confirm that there are many reasons why customers disconnect service that have no relevance to competition.[3] Moreover, Qwest's own data belies its claim that "[competitive] alternatives collectively are the primary reason for

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[2] *See, e.g., Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver MSA*, Declaration of Robert H. Brigham and David L. Teitzel, WC Dkt. No. 07-97, ¶ 5 (Apr. 27, 2007) ("Brigham/Teitzel Denver Decl."); *see also Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Seattle MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at 5 (Mar. 5, 2008) ("*Qwest Mar. 5th Seattle Ex Parte*").

[3] *See generally Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, Attach. 3, at 4-10 (Apr. 22, 2008) (responding to FCC Request 3) ("*Qwest Apr. 22nd Denver Ex Parte*"); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Minneapolis-St. Paul MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, Attach. 3, at 4-10 (Apr. 22, 2008) (same) ("*Qwest Apr. 22nd Minneapolis Ex Parte*"); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Phoenix MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, Attach. 3, at 4-10 (Apr. 22, 2008) (same) ("*Qwest Apr. 22nd Phoenix Ex Parte*"); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Seattle MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, Attach. 3, at 4-10 (Apr. 22, 2008) (same) ("*Qwest Apr. 22nd Seattle Ex Parte*").

the decline in Qwest's retail access line base."[4] Indeed, **[begin highly confidential]**

[end highly confidential]

In addition to **[begin highly confidential]**

[4] *See, e.g., Qwest Apr. 22nd Seattle Ex Parte* at 4.

[5] *See Qwest Apr. 22nd Denver Ex Parte* at 6.

[6] *See Qwest Apr. 22nd Minneapolis Ex Parte* at 6.

[7] *See Qwest Apr. 22nd Phoenix Ex Parte* at 6.

[8] *See Qwest Apr. 22nd Seattle Ex Parte* at 6.

[9] *Id.*

[10] *See Qwest Apr. 22nd Denver Ex Parte* at 6; *Qwest Apr. 22nd Minneapolis Ex Parte* at 6; *Qwest Apr. 22nd Phoenix Ex Parte* at 6.

[11] *See Qwest Apr. 22nd Denver Ex Parte* at 6.

[12] *See Qwest Apr. 22nd Minneapolis Ex Parte* at 6.

[end highly confidential]

It is also worth noting that while Qwest claims that mobile wireless "cut-the-cord" competition is "a factor that has contributed significantly to the competitive losses Qwest has experienced in its retail landline base,"[18] competition from non-Qwest wireless service providers accounted for **[begin highly confidential]** **[end highly confidential]** of Qwest residential access line disconnects in the Phoenix MSA from February 2006 to March 2008.[19] Wireless cut-the-cord competition accounted for **[begin highly**

[13] *See Qwest Apr. 22nd Phoenix Ex Parte* at 6.

[14] *See Qwest Apr. 22nd Seattle Ex Parte* at 6.

[15] *See id. at 7; Qwest Apr. 22nd Denver Ex Parte* at 7; *Qwest Apr. 22nd Minneapolis Ex Parte* at 7; *Qwest Apr. 22nd Phoenix Ex Parte* at 7.

[16] *See Qwest Apr. 22nd Minneapolis Ex Parte* at 7; *Qwest Apr. 22nd Phoenix Ex Parte* at 7; *Qwest Apr. 22nd Seattle Ex Parte* at 7.

[17] *See Qwest Apr. 22nd Denver Ex Parte* at 7.

[18] *See Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle MSAs, Ex Parte* Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at 2 (May 15, 2008) ("*Qwest May 15th 4-MSA Ex Parte*").

[19] *See Qwest Apr. 22nd Phoenix Ex Parte* at 7. This data is not necessarily inconsistent with the Centers for Disease Control and Prevention's conclusion that 15.8 percent of homes rely solely on mobile wireless service for their telephone service. *See* Centers for Disease Control and Prevention, *Wireless Substitution: Early Release of Estimates From the National Health*

confidential] **[end highly confidential]** disconnects in the Denver, Minneapolis, and Seattle MSAs, respectively, during the same period.[20] The numbers of business access line disconnects due to wireless competition **[begin highly confidential]** **[end highly confidential]** of business access line disconnects from February 2006 to March 2008 in each of the four MSAs **[begin highly confidential]** **[end highly confidential]** can be attributed to non-Qwest wireless competition.[21] **[begin highly confidential]** **[end highly confidential]** as Dr. Kent Mikkelsen has explained in this proceeding, "it is not clear that mobile wireless offers a competitive alternative to [wireline] services such as ADSL, DS1, and DS3 services" that are demanded by business customers.[22]

Looking beyond these numbers to the *actual reasons* provided by Qwest customers for access line disconnects demonstrates not only that there are numerous possible reasons for access line losses *besides competition* but that Qwest's method of counting access line "disconnects" as access line "losses" in an attempt to show increased competition is unreliable. *First*, **[begin highly confidential]**

Interview Survey, July-December 2007 at 1 (rel. May 13, 2008), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf. As the CDC observes, younger people are much more likely to "cut the cord" than older people. *See id.* at 3. It is entirely possible, therefore, that the vast majority of those that rely solely on mobile wireless service for telephone service have not subscribed to wireline service in the past (although they could, of course, do so in the future). Such customers would not have discontinued wireline service and would not be included in line loss data *per se*.

[20] *See Qwest Apr. 22nd Denver Ex Parte* at 7; *Qwest Apr. 22nd Minneapolis Ex Parte* at 7; *Qwest Apr. 22nd Seattle Ex Parte* at 7.

[21] *See Qwest Apr. 22nd Denver Ex Parte* at 6; *Qwest Apr. 22nd Minneapolis Ex Parte* at 6; *Qwest Apr. 22nd Phoenix Ex Parte* at 6; *Qwest Apr. 22nd Seattle Ex Parte* at 6.

[22] Kent Mikkelsen, "Mobile Wireless Service to 'Cut the Cord' Households in FCC Analysis of Wireline Competition" (Apr. 21, 2008), WC Dkt. No. 07-97, at 10 (filed Apr. 22, 2008).

[23] *E.g., Qwest Apr. 22nd Seattle Ex Parte* at 9.

[24] *E.g., id.*

[25] *E.g., id.* at 8.

[end highly confidential] resale of Qwest's local exchange service by a third party reseller.[27] As economist Joseph Gillan has explained in this proceeding, "[i]n the resale scenario, the reseller continues to share each of its customers with the incumbent, because the incumbent retains the lucrative access portion of the product mix for each of the resellers' customers."[28] Thus, it is disingenuous for Qwest to include disconnects due to resale among its access line "losses."

Second, **[begin highly confidential]** **[end highly confidential]** Qwest's access line disconnects are *not even actual disconnects* and, thus, cannot be considered "losses." For example, **[begin highly confidential]**

[end highly confidential] That is, when a Qwest residential subscriber moves out of her home or apartment and the new occupant continues to use Qwest as its local exchange carrier, Qwest considers this to be a "disconnect." But this occurrence does not result in an access line "loss" and therefore should not be counted as such by Qwest.

Third, **[begin highly confidential]**

[end highly confidential] Examples of such "losses" include closing of the customer's business, a declaration of bankruptcy by the residential or business customer, a move by the residential or business subscriber out of the Qwest region, and the death of the subscriber.[30] Similarly, where "Qwest disconnects a customer's line as a direct result of a legal order to do so,"[31] there is no business for a competing carrier to capture because law enforcement would likely not want *any* carrier to provide service to that customer .

It is also disingenuous for Qwest to characterize situations in which "Qwest initiates a disconnect of a customer's line to protect Qwest's revenue (e.g., may occur in instances where the Qwest service is being used in a fraudulent manner by the customer)"[32] as "losses" caused by

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[26] *E.g.*, *id.* at 9.

[27] *See, e.g.*, *id.*

[28] Joseph Gillan, "The Competitive Irrelevance of Resale and Commercial Officers," (May 2008), WC Dkt. No. 07-97, at 3 (filed May 15, 2008).

[29] *E.g.*, *Qwest Apr. 22nd Seattle Ex Parte* at 10.

[30] *See, e.g.*, *id.* at 6-9.

[31] *E.g.*, *id.* at 8.

[32] *E.g.*, *id.* at 9.

competition. In such cases Qwest itself initiates the disconnect and, like Qwest, a competing carrier would not want to serve a fraudulent customer. In addition, it is highly unlikely that a competitor could gain an access line from a Qwest "[c]ustomer with multiple accounts [who] wished to consolidate service into a single account and removes one or more lines in conjunction with the billing consolidation."[33] A customer in this situation presumably wants to reduce the number of bills its receives and would not want service from an additional service provider.

Thus, an examination of Qwest's own data reveals that, consistent with the FCC's holding in the *Six-MSA Order*, abandonment of an access line does not necessarily indicate capture of that customer by a competitor. Accordingly, the Commission should reject Qwest's proffer of line losses as evidence of competition and should instead rely on actual access line counts provided by competitors[34] to determine market share in the four MSAs at issue in this proceeding.

II. Qwest's Use Of White Pages Listings To Estimate Competitors' Access Lines Is A Flawed And Unreliable Method Of Measuring Facilities-Based Competition.

Qwest attempts to use white pages listings as a means of estimating facilities-based CLECs' market share.[35] Qwest's methodology for relying on white pages includes numerous assumptions for which it has provided no rational basis as well as other fundamental flaws, all of which render Qwest's estimates unreliable.

First, Qwest assumes that *CLECs'* so-called "listings-to-lines ratio" is the same as that of Qwest. That is, Qwest estimates the number of lines served by CLECs "based on Qwest's internal data showing that about **[begin confidential]** **[end confidential]** of *Qwest's* residential lines"[36] and "about **[begin confidential]** **[end confidential]** of *its* business lines are listed in the white pages directories."[37] Stated differently, after Qwest totals the number of CLEC residential and business white pages listings by rate center, it applies "*Qwest's* listings-

[33] *E.g., id.* at 8.

[34] Those of the Joint Commenters that have facilities-based connections in the four MSAs at issue (i.e., Integra Telecom, Inc. and Time Warner Telecom Inc.) will be submitting this information in a subsequent *ex parte* filing in this docket.

[35] *See, e.g.,* Qwest Brigham-Teitzel Denver Declaration ¶ 23; *see generally Qwest Apr. 22nd Denver Ex Parte*, Attach. 4, at 11-15 (responding to FCC Request 4); *Qwest Apr. 22nd Minneapolis Ex Parte*, Attach. 4, at 11-15 (same); *Qwest Apr. 22nd Phoenix Ex Parte*, Attach. 4, at 11-16 (same); *Qwest Apr. 22nd Seattle Ex Parte*, Attach. 4, at 11-15 (same).

[36] *See, e.g., Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver, Colorado MSA,* WC Dkt. No. 07-97, at 10 (Apr. 27, 2007) (emphasis added) ("*Qwest Denver Petition*").

[37] *See, e.g., id.* at 23 (emphasis added).

to-lines ratios" "to the rate center subtotals to estimate total *CLEC* facilities-based lines by rate center."[38] However, Qwest provides no reasoned explanation for making such an assumption other than that it "does not have access to the listings-to-lines ratios of its competitors."[39] This fact calls into question the entire premise of using white pages as a basis for determining the number of access lines served by facilities-based competitors. This is because a significant difference in the listings-to-lines ratio between Qwest and competitors would cause Qwest's estimates of competitors' total access lines to be either too high or too low.[40] Nor are competitors' listings-to-lines ratios readily available since, as the Joint Commenters have explained, they do not keep this information and it would be difficult to obtain.[41]

Second, Qwest assumes that *all of the CLECs* in the relevant MSAs have the *same* listings-to-lines ratio as each other (i.e., Qwest's listings-to-lines ratio). However, Qwest fails to provide any rationale for this assumption. In fact, it is likely that listings-to-lines ratios among CLECs varies significantly because the particular mix of products and services sold by a carrier likely has a significant impact on the number of white pages listings for that particular carrier. Moreover, a failure to account for differences among CLECs' listings-to-lines ratios would distort Qwest's access line estimates if, as is the case, there are significant variations in market share among CLECs.[42]

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[38] *See, e.g., Qwest April 22nd Seattle Ex Parte* at 12 (emphasis added).

[39] *See, e.g., id.* at 13 (emphasis omitted).

[40] For example, if competitors' listings-to-lines ratio for business access lines were **[begin confidential]** **[end confidential]** then Qwest would have overestimated CLEC business lines by **[begin confidential]** **[end confidential]**.

[41] *See* "Presentation Regarding Qwest Petitions for Forbearance from Dominant Carrier and Unbundling Regulation in the Denver, Minneapolis, Phoenix, and Seattle MSAs" at 1 (Attachment to Letter from Thomas Jones, Counsel for Cbeyond Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97 (filed May 15, 2008)).

[42] Suppose there are only two CLECs, A and B, in a given MSA. CLEC A has 10,000 business white pages listings and a business listings-to-lines ratio of 50 percent, and CLEC B has only 1,000 business white pages listings and a business listings-to-lines ratio of 22 percent. A simple and unweighted average of the two CLECs' listings-to-lines ratios is 36 percent, **[begin confidential]** **[end confidential]** But the total number of CLEC business access lines, based on white pages listings, in that MSA would be 24,546 (the sum of 20,000 lines for CLEC A and 4,546 lines for CLEC B). By contrast, using Qwest's business listings-to-lines ratio of **[begin confidential]** **[end confidential]**, the number of CLEC business access lines based on the total 11,000 business white pages listings (the sum of 10,000 listings for CLEC A and 1,000 listings for CLEC B) would be **[begin confidential]** **[end confidential]**.

Third, Qwest assumes that CLECs' *geographic distribution* of access lines within a given rate center would be the *same* as that of Qwest.[43] In particular, Qwest must account for the fact that it calculates white pages listings by rate center and some wire centers that are part of rate centers are *not* wholly contained within the boundaries of the MSA at issue. Qwest therefore makes "a downward adjustment in the line counts in the affected rate center" by "calculating the percentages of its own business and residential retail lines that were attributable to wire centers that *are* also within the MSA boundary, and it applie[s] those percentages to the corresponding rate center subtotals of CLEC facilities-based lines to derive the adjusted subtotals."[44] But Qwest candidly acknowledges that "there is no basis for assuming that the CLECs' distribution of lines within a particular rate center would match Qwest's distribution of retail lines."[45] Qwest claims instead that "absent any actual means of identifying CLEC lines that lay outside of the MSA boundary, this was a good-faith effort to avoid the overstatement of CLEC lines."[46] Qwest's good-faith effort notwithstanding, it must provide a reasoned explanation for its approach to estimating competition in the four MSAs at issue.

Fourth, Qwest assumes that CLECs' listings-to-lines ratios for both business and residential customers was the *same across all four MSAs* at issue. **[begin highly confidential]**

[end highly confidential] resulting "in a higher estimate" of CLEC residential lines in Minneapolis.[48] This fact belies Qwest's claim that its methodology "was more likely to have *under*estimated CLEC line counts than to have *over*estimated them."[49] In any event, there is no basis for Qwest's assumption that CLECs' listings-to-lines ratio is the same in each of the four MSAs. Failure to account for what are likely material differences again causes Qwest's estimates to be either too high or too low, but in either case, inaccurate.

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[43] *See, e.g., Qwest April 22nd Seattle Ex Parte* at 12.

[44] *See, e.g., id.* (emphasis in original).

[45] *See, e.g., id.*

[46] *See, e.g., id.* (emphasis omitted).

[47] *See, e.g., id.* at 14.

[48] *See Qwest Apr. 22nd Minneapolis Ex Parte* at 15.

[49] *See, e.g., id.* at 13.

Fifth, Qwest assumes that "many former Qwest customers who are now CLEC customers would likely have maintained a similar rate of white pages listings when they chose to leave Qwest and obtain service from a CLEC,"[50] but Qwest fails to account for the potential differing rate of white page listings by CLEC customers *who were never Qwest customers* in its analysis. Qwest cannot presume that the rate of listings for these CLEC customers is the same as that of current or former Qwest customers.

Sixth, Qwest claims that "neither the business nor the residential ratio of its competitors is 1:1" and that "it is unreasonable to conclude that there is a published listing for every business customer and every residential customer of every competitor"[51] in a given MSA. Yet that is exactly what Verizon has argued in other pending forbearance proceedings. Specifically, Verizon has argued that its listings-to-lines ratio for residential access lines in the state of Rhode Island is approximately 1:1.[52] Similarly, Verizon has claimed that this ratio in the Virginia Beach MSA is nearly 1:1.[53] Qwest's region-wide residential listings-to-lines ratio is **[begin confidential]** **[end confidential]**. Therefore, the rate of residential access line white pages listings appears to vary by **[begin confidential]** **[end confidential]** between two similarly situated RBOCs and Qwest provides no explanation for this disparity.

Finally, Qwest relies on unexplained assumptions for determining the percentage of the access lines that competitors serve via their own loop facilities. In *ex parte* letters filed in February and March 2008 in this docket, Qwest sought to replicate the market share calculation methodology used by the Commission in the *Six-MSA Order* in the Denver, Minneapolis, Phoenix, and Seattle MSAs.[54] In these calculations, **[begin confidential]**

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[50] *See, e.g., Qwest Apr. 22nd Seattle Ex Parte* at 13.

[51] *See, e.g., id.*

[52] *See* Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Rhode Island, WC Dkt. No. 08-24, at 11-12 (Feb. 14, 2008) ("In the case of Verizon's own residential retail customers in Rhode Island, . . . the number of residential white pages listings and the number of residential switched access lines are within less than one percent of each other.").

[53] *See* Petition of Verizon New England for Forbearance Pursuant to 47 U.S.C. § 160(c) in Cox's Service Territory in the Virginia Beach MSA, WC Dkt. No. 08-49, at 11 (Mar. 31, 2008) ("In the case of Verizon's own residential retail customers in Cox's service territory in the Virginia Beach MSA, . . . the number of residential directory listings is within 4 percent of the number of residential switched access lines.").

[54] *See Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Phoenix MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at 2 & 12 (Feb. 21, 2008) ("*Qwest Feb. 21st Phoenix Ex Parte*"); *Qwest Mar. 5th Seattle Ex Parte* at 4 & 13; *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC,

[end confidential] Because Qwest's white pages-derived access line totals include lines served via loops that competitors lease as UNEs or special access from Qwest,[56] it was necessary for Qwest to remove such lines from the calculation in order to replicate the Commission's methodology in the *Six-MSA Order*. Qwest therefore apparently multiplied its estimate of access lines served by competitors by an estimate of the percentage of white pages residential listings belonging to a cable company **[begin highly confidential]** **[end highly confidential]** But Qwest offers no explanation as to how it derived these percentages. Absent such an explanation, it is impossible to know how accurate these percentages are or how closely Qwest was able to replicate the Commission's methodology in the *Six-MSA Order*.

Accordingly, because Qwest's "methodology" rests on so many assumptions, its data cannot be relied upon as evidence of facilities-based competition. Indeed, Qwest admits that its approach to estimating competitors' access lines "produces an imperfect result"[58] and that competitors are "the most accurate source" of access line data for the four MSAs at issue.[59] Accordingly, the Commission should reject Qwest's flawed access line estimates and rely instead on competitors' actual access line counts in its forbearance analysis.

WC Dkt. No. 07-97, at 4 & 13 (Mar. 10, 2008); *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Minneapolis-St. Paul MSA, Ex Parte* Letter from Melissa E. Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 07-97, at 8 & 18 (Mar. 14, 2008).

[55] *See id.*

[56] *See, e.g., Qwest Apr. 22nd Seattle Ex Parte* at 11.

[57] *See, e.g., Qwest Apr. 22nd Minneapolis Ex Parte* at 15; *Qwest Apr. 22nd Phoenix Ex Parte* at 15-16.

[58] *E.g., Qwest Apr. 22nd Seattle Ex Parte* at 11.

[59] *See, e.g., Qwest Feb. 21st Phoenix Ex Parte* at 3.

Respectfully submitted,

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