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July 2, 2008

**VIA ECFS**

**REDACTED FOR PUBLIC INSPECTION**

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

Re: *Petitions of Qwest Corp. 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:

The undersigned companies, through their attorneys, hereby provide additional data and analysis proving that Qwest Corporation ("Qwest") has failed to satisfy the minimum prerequisites for forbearance from Section 251(c)(3) unbundling obligations, *Computer III* requirements, or any dominant carrier rules in the mass market in any of the four Metropolitan Statistical Areas ("MSAs") for which it is seeking such relief in the above-captioned proceeding. As shown below, the threshold criterion[1] for forbearance – whether competitors have achieved

[1] As explained in detail in the letter submitted in this docket by the undersigned parties on April 24, 2008, the critical first step in the forbearance analysis employed by the Commission involves a determination of whether successful facilities-based competition exists at the aggregate level in each MSA at issue. If the aggregate competitive market penetration threshold is met in a particular product market, however, a more granular analysis must then be undertaken to determine whether there is sufficient competition to warrant forbearance. As noted in the April 24th letter, however, the discussion of the analytical framework employed by the Commission in prior forbearance orders is not intended as a wholesale endorsement of that framework, which the undersigned companies believe does not produce a complete or meaningful competitive analysis. *See* Letter from

**[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** in a particular product market – has not been met in the mass market in the Denver, Minneapolis-St. Paul, Phoenix, or Seattle MSA.

Qwest – by its own admission – continues to enjoy **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** in the Denver, Minneapolis-St. Paul, and Seattle MSAs.[2] Only in the Phoenix MSA does Qwest represent that the residential market share held by competitors exceeds the threshold employed by the Commission in prior forbearance orders.[3] As Table 1 below shows, however, Qwest's conclusion is incorrect.[4] Competitors' current share of the residential market in the Phoenix MSA, excluding non facilities-based and cut-the-cord wireless lines, is **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**. Even assuming that cut-the-cord wireless lines are included in the same product market as wireline lines – which they should not be – competitors currently hold only **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]** of the residential market in the Phoenix MSA. Thus, the aggregate competitive market penetration required by the Commission as a necessary first step in the forbearance analysis also has not been achieved in the residential market in the Phoenix MSA.[5]

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Brad Mutschelknaus, Counsel to Covad Communications Group, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Apr. 24, 2008) ("*April 24th Ex Parte*").

2 Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Mar. 5, 2008) ("*Qwest Mar. 5th Ex Parte*"), at 4; Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Mar. 10, 2008) ("*Qwest Mar. 10th Ex Parte*"), at 4; Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Mar. 14, 2008) ("*Qwest Mar. 14th Ex Parte*"), at 8.

3 Letter from Daphne Butler, Corporate Counsel, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Feb. 21, 2008) ("*Qwest Feb. 21st Ex Parte*").

4 Our focus on the Phoenix MSA does not mean that we accept the accuracy of Qwest's market share analysis for the Denver, Minneapolis-St. Paul, or Seattle MSA. To the contrary, we would expect that Qwest's calculations for those three MSAs share the same infirmities as we have identified for the Phoenix MSA. However, because Qwest acknowledges that it does not meet the appropriate threshold aggregate market share for those other three markets, there is no need at this time to correct in detail Qwest's analysis.

5 These percentages do not take into account Qwest's share of small business lines, which the Commission includes in its definition of the mass market. *See, e.g., Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, ¶ 22 (2005)

Table 1 estimates competitors' residential market share in the Phoenix MSA applying the methodology set forth in Appendix B of the *Verizon 6-MSA Order*[6] with certain specific adjustments. Each of the calculations in Table 1 embodies two refinements to the Appendix B Methodology. *First*, Scenarios A through E all incorporate the regional estimate of wireless-only activity contained in the Centers for Disease Control's ("CDC") May 2008 Survey, instead of the national average as used in Appendix B.[7] The CDC Survey provides separate estimates for each of the four geographic regions routinely used by the Census Bureau: Northeast, Midwest, South, and West. There are substantial differences in the estimates of wireless-only households between regions. Thus, in order to ensure that the most accurate available estimate of wireless-only usage is employed, the Commission should use the applicable regional estimate (*i.e.*, West) in its analysis. Because the CDC Survey reports regional data as the percentage of *adults* in wireless-only households – while the national data in the Survey is reported as the percentage of *households* – the regional estimate for the West (12.9%) was adjusted using the

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("*Omaha Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450 (D.C. Cir. Mar. 23, 2007) ("[W]e divide these interstate services into the mass market (residential consumers and small business customers) and the enterprise market (medium-sized and large business customers."). Although Qwest has not filed sufficient data to calculate its current overall market share in the mass market, which includes both residential and small business lines, it can reasonably be concluded that Qwest's share of the mass market in the Phoenix MSA is greater than the percentages listed above. The Arizona Corporation Commission ("Arizona CC") recently informed the Commission that "[its] analysis shows that there are no wire centers in which Cox or any other CLEC has a significant market share of small business customers." *See* Letter from Chairman Mike Gleason, *et al.*, Arizona Corporation Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jun. 18, 2008), at 3. The Arizona CC stated further that "[o]verall, Cox has only a **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** market share in the small business market" and "[t]he other CLECs have only a **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** market share." *Id.*

6 *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (rel. Dec. 5, 2007) ("*Verizon 6-MSA Order*"), appeal pending, *Verizon Telephone Companies v. FCC*, No. 08-1012 (D.C. Cir. filed Feb. 14, 2008), Appendix B ("*Appendix B Methodology*").

7 *See Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2007*, Centers for Disease Control, (rel. May 13, 2008) ("*CDC May 2008 Survey*"), Table 2. While the undersigned companies believe it is essential that the Commission utilize source data obtained from a neutral third party to estimate wireless-only lines, the undersigned companies do not necessarily endorse use of the CDC Survey in particular.

ratio that existed between the variables in the earlier (January to July 2007) data released by the CDC.[8]

*Second,* lines served through Resale and QPP (Qwest's unbundled network element platform ("UNE-P") replacement product) have been eliminated from the competitors' residential market share calculation. The exclusion of Resale and QPP from the market share analysis is appropriate because these services are not competitive loop-based and the Commission has held time and again that only competitive loop-based competition is properly included in the forbearance analysis.[9] Moreover, these products do not discipline Qwest's retail prices and for that reason should not be afforded any weight in a forbearance analysis.[10] The Commission's discussion of these services in the *Verizon 6-MSA Order* was at best dicta.[11]

The above refinements are common to each of the Scenarios in Table 1. The differences between each of the Scenarios concerns whether additional refinements – or, in the case of Scenario E, the elimination of any "cut-the-cord" wireless lines – were used when determining the competitors' market share.[12]

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8 In the course of discussions with the CDC during preparation of the White Paper entitled *Properly Estimating the Size of the Wireless-Only Market* ("*Gillan Wireless Paper*"), the CDC provided additional data that is not published in its semi-annual surveys. Specifically, for the January – June 2007 time period, the CDC provided the national penetration of wireless-only as a percentage of adults (12.64%), in comparison to the national average as a percentage of households of 13.6%. Consequently, to place the July-December 2007 regional estimates (of adults) on the same foundation as the estimate relied upon in Appendix B (that is, as a percentage of households), each regional value has been multiplied by a factor of 1.076 (calculated from the ratio +13.6/+12.64). *See* Gillan Associates, *Properly Estimating the Size of the Wireless-Only Market* (Mar. 2008) ("*Gillan Wireless Paper*"), appended to Letter from Brad E. Mutschelknaus, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Apr. 22, 2008).

9 *See, e.g., Omaha Forbearance Order*, ¶ 64.

10 *See* Gillan Associates, *The Irrelevance of Resale and RBOC Commercial Offers to Competitive Activity in Local Markets* (May 2008), appended to Letter from Brad E. Mutschelknaus, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed May 15, 2008).

11 *See Verizon 6-MSA Order*, ¶ 37 ("Verizon's MSA-wide mass market market shares, *even including* wireless 'cut the cord' competition and competition from section 251(c)(4) resale and Verizon's Wholesale Advantage service, and taken in conjunction with other factors, are not sufficient to warrant forbearance . . .") (emphasis supplied).

12 The data used in Table 1 is drawn from the following sources: (1) Qwest's residential customer count was drawn from the *Qwest Feb. 21st Ex Parte*; (2) Cox's residential customer count was drawn from the *Cox June 17th Ex Parte*, Letter from J.G. Harrington, Counsel to Cox Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed Jun. 17, 2008) ("*Cox June*

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**Table 1: Effect of Wireless-Only Corrections on Competitors' Residential Share**

| Scenario | Treatment of Wireless | Estimated Wireless-Only (% households) | Estimated Competitors Residential Share |
|---|---|---|---|
| Scenario A | Regional Estimate Used (West Region) | | |
| Scenario B | Lower Bound of 95% Confidence Interval | | |
| Scenario C | Distorting Influence of 18-24 Age Group Removed | | |
| Scenario D | Both Lower Bound of 95% CI and 18-24 Age Group Removed | | |
| Scenario E | Wireless Not Included in Same Product Market as Wireline | | |

**[END HIGHLY CONFIDENTIAL]**

Clearly, based on any reasonable assessment of available market share data – including the assessment most favorable to Qwest – competitors have not achieved the threshold aggregate market penetration in the mass market in the Denver, Minneapolis-St. Paul, Phoenix, or Seattle MSA that is a prerequisite to the statutorily-required further review of whether forbearance

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*17th Ex Parte*"); and (3) the wireless-only percentages were derived from the *CDC May 2008 Survey*.

from Section 251(c)(3) unbundling obligations, *Computer III* requirements, or dominant carrier rules is warranted. Consequently, Qwest's petitions should be denied in their entirety.

Respectfully submitted,

**COVAD COMMUNICATIONS GROUP**
**NUVOX**
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