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VIA COURIER

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July 1, 2008

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JUL - 1 2008

Federal Communications Commission
Office of the Secretary

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

Re: *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*

Dear Ms. Dortch:

On June 16, 2008, XO Communications ("XO"), Covad Communications and Nuvox ("Joint CLECs")¹ filed an *ex parte* in this proceeding arguing that Qwest Corporation ("Qwest") has not provided sufficient evidence of telecommunications competition in the four Metropolitan Statistical Areas ("MSAs") at issue to warrant the requested forbearance relief. The Joint CLECs claim "fixed wireless technologies do not currently represent a viable alternative to wireline transport or last-mile facilities."² Further, the Joint CLECs state: "[t]he difficulties inherent in deploying fixed wireless technologies, coupled with the serious operational concerns they represent, have prevented any fixed wireless services from becoming a generally-available substitute for incumbent local exchange carrier ("ILEC") network facilities today."³ The Joint CLECs also cite as support a White Paper submitted by Economics and Technology, Inc., submitted in "the Commission's special access reform docket last August"⁴ which clearly does not account for recent changes in the fixed wireless market. These statements by the Joint CLECs are belied by information provided to investors and the public.

¹ Since XO, one of the signatories, is the parent company of NextLink, the Joint CLECs apparently also speak for NextLink -- one of the premier fixed wireless service providers in the U.S.

² Joint CLECs' *ex parte*, filed June 16, 2008 at 6 ("Joint CLECs' *ex parte*").

³ *Id* at 7.

⁴ *Id*.

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First, NextLink, a fixed wireless broadband service provider that is actively competing in the enterprise market in each of the four MSAs at issue in this proceeding,⁵ is in the midst of an era of unprecedented growth and is enjoying significant revenue growth from its fixed wireless operations. In its latest earnings report, for period ending March 31, 2008, XO reported that NextLink generated revenue of \$872,000 for the period (with \$589,000 associated with “revenue from external customers”), as opposed to \$222,000 (with \$172,000 coming from “external customers”) for the period ending March 31, 2007. In other words, NextLink’s overall revenue from its fixed wireless telecommunications operations grew by 293% and its revenue from “external customers” grew by 242% in a single year. Apparently, NextLink’s remarkable successes over the past year were not taken into account in the Joint CLECs’ *ex parte*.

Next, the Joint CLECs cite to the Federal Communications Commission’s (“Commission”) grant in April 2008 of a “nearly four year extension of the construction requirement for 678 licenses in the Local Multipoint Distribution Service (“LMDS”)⁶ to enable the holders of licenses in the LMDS spectrum sufficient time to demonstrate to the Commission that they are “providing substantial service in each licensed area.”⁷ The Joint CLECs suggest that the grant of this extension request shows that fixed wireless technologies do not currently represent a viable alternative to Qwest’s facilities.⁸

NextLink, however, has continued to aggressively deploy its LMDS services to 36 markets, including each of the four MSAs at issue in this proceeding. For instance, in a July 11, 2007 press release, XO announced:

XO Communications, a leading provider of 21st century communications services for businesses and communications services providers, today announced that it has expanded its broadband wireless coverage to 36 metropolitan markets,

⁵ This extension encompasses NextLink’s fixed wireless service. Since NextLink is active in all four MSAs at issue in this proceeding, and is owned by XO Communications -- one of the signatories to the Joint CLECs’ *ex parte*, much of the following discussion regards NextLink. However, this discussion does not mean that other fixed broadband wireless providers are not also active in some of these markets. For instance, Towerstream “is a leading fixed WiMAX service provider in the U.S., delivering high speed Internet access to businesses.” (See <http://www.towerstream.com/index.asp?ref=home>.) Towerstream’s network bypasses the local landline telecommunications network, and is now available in Seattle. Similarly, FiberTower provides “backhaul and access service to government and enterprise markets” via fixed wireless LMDS service, holds spectrum in all four MSAs at issue in this proceeding, and is active in the Denver market. (See <http://www.fibertower.com/corp/index.shtml>.)

⁶ Joint CLECs’ *ex parte* at 7.

⁷ *Id.* at 6.

⁸ *Id.*

marking the nation's most expansive utilization of fixed broadband wireless technology to deliver broadband networking services to businesses. XO Communications has added 24 new metropolitan markets as part of its nationwide expansion and partnership with Nextlink, an affiliated XO company and the nation's largest holder of Local Multipoint Distribution System (LMDS) spectrum with licenses in 75 metropolitan markets. The new markets are: Akron, Austin, Baltimore, Boston, Cleveland, Columbus, Colorado Springs, **Denver**, Detroit, Fort Lauderdale, Memphis, **Minneapolis/St. Paul**, Nashville, Oakland, Philadelphia, Pittsburgh, Portland, Sacramento, St. Louis, San Antonio, San Francisco, San Jose, Tucson and Wilmington, DE. In addition to the new markets announced today, XO Communications also utilizes broadband wireless technology in Atlanta, Chicago, Dallas, Houston, Las Vegas, Los Angeles, Miami, **Phoenix**, San Diego, **Seattle**, Tampa and Washington, DC.⁹ (Emphasis added.)

Further, XO stated:

XO Communications is utilizing licensed broadband wireless spectrum from Nextlink, an affiliated XO company and the nation's largest holder of Local Multipoint Distribution System (LMDS) spectrum with licenses in 75 metropolitan markets. This technology allows XO to extend the reach of its metro fiber networks and offer a broad range of high-speed Internet access and private data networking services directly to businesses. Over broadband wireless links, XO Communications can deliver high-speed network connections at speeds ranging from 10 Mbps to 155 Mbps (OC-3) to support a wide range of communications services, including dedicated Internet access, metro Ethernet, and voice over IP (VoIP). . . XO Communications' broadband wireless coverage includes the downtown business areas in the markets announced today as well as most surrounding suburbs.¹⁰

Clearly, XO/NextLink has extensively deployed fixed wireless services in the four markets at issue in this proceeding and is positioning those services as a direct alternative in the Enterprise business market to landline-based broadband services offered by Qwest.

Additionally, the availability of less expensive and higher performing LMDS equipment should continue to expand the deployment of these services by other providers as well. As the LMDS Coalition stated in its request for waiver of the substantial service requirements:

[T]echnological advances have caused LMDS equipment prices to fall by as much as 30 to 50 percent, and equipment throughput to increase from approximately

⁹ See <http://www.xo.com/about/news/Pages/350.aspx> (visited June 30, 2008).

¹⁰ *Id.*

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155 Megabits-per-second (“Mbps”) in 2001 to 400 Mbps today; indeed, throughput speeds of up to 800 Mbps are possible. Over the next several years, prices are expected to keep falling and throughput is expected to keep growing.¹¹

Additionally, the LMDS Coalition stated:

LMDS can offer robust bandwidth over short distances, ideal for backhaul uses and business-oriented wireless broadband access services, both segments of the industry experiencing explosive growth.¹²

To capture this explosive growth, NextLink continues to aggressively deploy its fixed wireless services to additional markets. On June 5, 2008, NextLink announced that it has deployed service in the New York City metropolitan area, and that it can now “meet the increasing bandwidth needs of communications carriers and businesses in more than 80 of the largest U.S. markets” and “NextLink services can be engineered to provide up to 99.999 percent network availability to extend high-speed connectivity to places where fiber optic based networks are not available today.”¹³

While the Joint CLECs would have the Commission believe that only a small fraction of the number of commercial locations in the four MSAs can be reasonably served by non-Qwest network facilities, it is noteworthy that NextLink -- a subsidiary of XO -- actively promotes its fixed wireless service as being a direct substitute for traditional landline-based broadband services, has enjoyed revenue growth of nearly 250% in a single year from services provided to external customers, is serving a market segment characterized as having “explosive growth,” and is in an industry enjoying sharply declining equipment costs. Simply stated, these facts do not square with the Joint CLECs’ attempt to convince the Commission that fixed wireless service should be ignored as a competitive factor in this proceeding.

Respectfully submitted,

/s/ Daphne E. Butler

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¹¹ *Request for Waiver and Limited Extension of Deadline for Establishing Compliance With Section 101.1011(a) LMDS Substantial Service Requirements*, June 14, 2007 at 10.

¹² *Id.* at 12.

¹³ See <http://www.nextlink.com/nextlink-launches-new-york.html>.

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