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VIA ECFS

EX PARTE

July 8, 2008

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 25, 2008, PAETEC reported that it had presented certain data on June 24, 2008 to members of the Federal Communications Commission's ("Commission") Staff.¹ Attached to that notification was a copy of PAETEC's June 24 presentation regarding PAETEC's view of the competitive situation in Omaha and the effect of the *Omaha Forbearance Order*² on McLeodUSA.

PAETEC's letter contains an important admission regarding the extent of its competitive losses to Cox in the Omaha market.³ It is well known that Cox continues to be a formidable facilities-based competitor in Omaha, winning an ever-increasing portion of the Omaha telecommunications market, both for mass market and Enterprise market services. PAETEC confirms this, and quantifies its losses to Cox in Omaha by stating:

¹ See Letter from Mr. Russell M. Blau, counsel for PAETEC, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97, dated June 25, 2008 and its attached Summary of *Ex parte* presentations by PAETEC ("PAETEC *ex parte*").

² *In the Matter of 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 (2005) ("*Omaha Forbearance Order*"), *pets. for rev. dismissed and denied on the merits, Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

³ PAETEC *ex parte* at 1.

McLeodUSA has experienced some measure of line exports to Cox in the enterprise market in Omaha (*e.g.*, 23% in 2007), although considerably less than in the residential and small business segments.⁴

By “line exports,” Qwest Corporation (“Qwest”) assumes that PAETEC refers to lines lost to Cox. This demonstrates that Cox had made significant inroads into McLeod’s enterprise market business in 2007 alone, not accounting for any losses by McLeod to Cox in prior years. This statement also reveals that McLeod’s residential and small business losses to Cox have been “considerably greater” than its considerable losses to Cox in the enterprise market. Clearly, McLeod’s losses in Omaha are caused by competition from Cox and others -- not due to forbearance.

Since Cox is also a significant competitor in the Phoenix Metropolitan Statistical Area (“MSA”), and targets the same customer segments there as it does in the Omaha market, it is clear that PAETEC experiences similar competitive pressures from Cox in the Phoenix MSA in the business market (in addition to pressure from other competitive local exchange carriers (“CLECs”), such as Integra Communications, XO Communications, AT&T, Verizon, Broadwing and others, many of which are active in the Phoenix MSA but not in Omaha). PAETEC also admitted that it faces “much broader facilities-based competition in Denver than it ever faced in Omaha,”⁵ acknowledging that, even though its market losses to facilities-based competitors in Omaha are very high, they are even higher elsewhere. This is not surprising, since Denver, like Phoenix, features a broader array of facilities-based competitors than Omaha, including those listed above for the Phoenix MSA in addition to Comcast⁶ (which is the dominant cable-based provider in the Denver, Minneapolis-St. Paul and Seattle markets).

PAETEC alleges that “there are **no other facilities-based alternatives** to Qwest for last mile access in any of these four markets,” (emphasis added) referring to the Denver, Minneapolis-St. Paul, Phoenix and Seattle markets.⁷ This is simply not true. As Qwest has demonstrated in its petitions, declarations and *ex partes* -- including the Qwest *ex partes* dated July 1, 2008 -- there are multiple providers offering fiber services to carriers in each of the four MSAs. For example, American Fiber Systems (“AFS”) has an extensive fiber network in Minneapolis-St. Paul that it markets to CLECs such as McLeod. SRP Telecom has an extensive fiber network in the Phoenix MSA that it actively markets to other carriers. In addition, Cox offers its wholesale Cox Carrier Access service not only in Omaha, but in the Phoenix MSA.⁸

⁴ *Id.* at 3.

⁵ *Id.* at 1.

⁶ See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Colorado Metropolitan Statistical Area, WC Docket No. 07-97, pp. 6, 9, 21, 23, 24, 27.

⁷ PAETEC *ex parte* at 3.

⁸ See <http://www.coxbusiness.com/products/other/carrierservices.html>. Also, at page 2 of its *ex parte*, PAETEC admits that it is aware of Cox’s wholesale facilities-based service when it states

Finally, Comcast publicly promotes its wholesale facilities-based services to other carriers in Denver, Minneapolis-St. Paul and Seattle. These are only a few of the examples outlined in Qwest's July 1, 2008 *ex parte* and in other Qwest submissions in this proceeding.

Turning back to the Omaha proceeding, PAETEC makes a number of arguments to which Qwest will respond only briefly. PAETEC claims that McLeod "has not disconnected its residential customer base elsewhere as it is being forced to do in Omaha."⁹ This statement is very misleading. First, McLeod filed with the Nebraska Public Service Commission ("PSC") to withdraw from the residential telecommunications service market throughout Nebraska, not only in the nine Omaha wire centers where Section 251 forbearance was granted. It is a huge leap to presume that McLeod was "forced" to leave the residential market in an entire state by virtue of a Commission action specific to nine wire centers. Additionally, McLeod has, indeed, taken action to leave residential customers behind in other states. While Qwest has not conducted an exhaustive search for McLeod filings on this issue, it has located several that are relevant. For example, in Wyoming, McLeod filed on June 15, 2007 to grandfather residential services throughout the state.¹⁰ In Colorado, on October 10, 2007, McLeod filed to "discontinue residential services in certain wire centers," and notified the Colorado Public Utilities Commission in its filing that it intended to discontinue providing residential service on December 4, 2007 to customers in selected areas of the state.¹¹ That petition was approved on November 20, 2007.

On September 12, 2007, McLeod filed an application in Nebraska to "cease providing residential services in certain Qwest wire centers," which encompassed over 50 Qwest wire centers in the state.¹² In its petition, McLeod cites as the cause of its decision "the FCC's adoption of changes to the unbundling obligations of Qwest under Section 251(c)(3) that became effective in 2006" and argues that "McLeodUSA is required to purchase Qwest's QPP to continue providing service to these customers."¹³ In other words, McLeod lays the blame for its decision on the Commission's *Triennial Review Remand Order* (issued in 2006), in which the Commission found that local switching was no longer required to be provided as an Unbundled Network Element ("UNE"), which has nothing to do with forbearance from Section 251 requirements with respect to local loops.

"In late 2005, using its own fiber, Cox had the capability to offer a competing wholesale offering in a minority of the locations where McLeodUSA had an existing T-1 customer." In other words, PAETEC acknowledges that Cox offers facilities-based alternatives to Qwest's network, but in something less than 50% of the locations McLeodUSA wished to serve in 2005.

⁹ PAETEC *ex parte* at 1.

¹⁰ Docket No. 70023-93-TT-7, filed June 15, 2007, effective June 30, 2007.

¹¹ Docket No. C07-0983, filed Oct. 10, 2007, effective Nov. 20, 2007.

¹² Application No. C-3860, filed Sept. 12, 2007.

¹³ *Id.*

PAETEC also argues that Qwest's DS0 prices in the nine Omaha forbearance wire centers increased by "30% over TELRIC [Total Element Long Run Incremental Cost] cost based rates."¹⁴ Qwest does not concede that TELRIC provides any standard against which commercial rates should be judged. Even so, it is notable that Qwest's current wholesale rate for DS0s is very close to the most recent TELRIC price established by the Nebraska PSC.¹⁵

Next, PAETEC complains that the DS1 and DS3 wholesale prices available from Qwest in the nine Omaha forbearance wire centers are limited to special access loop pricing, even though forbearance did not affect the continued availability of below-cost UNE loop prices in the remainder of the Omaha wire centers.¹⁶ It is correct that DS1 and DS3 loops are offered at special access rates in these nine wire centers, as they are in any wire center where Qwest has been granted Section 251 relief for DS1 and/or DS3 loops under the guidelines of the *Triennial Review Remand Order*. Qwest also makes available term and volume discounts, Regional Commitment Plans, and Price Flex Overlays,¹⁷ all of which provide lower prices than the tariffed month-to-month rates. Qwest maintains, and the Commission has not found otherwise, that its Special Access pricing is in full compliance with the "just and reasonable" pricing requirements of Section 271.

Finally, PAETEC implies that Qwest raised prices as a result of forbearance stating: "Qwest has increased its special access rates in Omaha and elsewhere since gaining pricing flexibility, and has never reduced those rates in response to competitive pressure."¹⁸ In fact, Qwest's last Special Access pricing increase in Omaha was in August, 2004, well before the Commission issued its *Omaha Forbearance Order* in 2005.

In sum, PAETEC's *ex parte* contains a significant admission regarding the scope of its mass markets and Enterprise competitive losses to Cox in Omaha and suggests that losses to facilities-based carriers in other markets, including Denver, are even greater. PAETEC's *ex parte* also contains a misstatement regarding last mile alternatives in the four MSAs at issue in this proceeding. Finally, the *ex parte* is misleading regarding the state of competition in Omaha and the effects of the *Omaha Forbearance Order*.

Respectfully submitted,

/s/ Daphne E. Butler

¹⁴ PAETEC *ex parte* at 2.

¹⁵ See Opposition of Qwest Corporation, WC Docket No. 04-223, filed Aug. 29, 2007 at 9 ("Qwest Opposition").

¹⁶ PAETEC *ex parte* at 2.

¹⁷ Qwest Opposition at 14.

¹⁸ PAETEC *ex parte* at 2.

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