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July 8, 2008

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth 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 – *EX PARTE*

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission rules, this is to notify you that on July 7, 2008, Sara Cole of TDS Metrocom, LLC, and the undersigned made oral *ex parte* presentations concerning the above-referenced proceeding to Amy Bender, legal advisor to Chairman Martin; to Scott Deutchman, legal advisor to Commissioner Copps; and to Marcus Maher, Randy Clarke, and Hannah Anderson of the Wireline Competition Bureau. The attached written materials, which were distributed during the presentations, summarize the matters discussed.

Respectfully submitted,

/electronically signed/

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Attachment

Qwest Four City UNE Forbearance Petitions

WC Docket No. 07-97

TDS Metrocom, LLC

Sara Cole

Manager, Federal Affairs

TDS METROCOM

- Midwest competitive carrier affiliate of a rural incumbent – TDS Telecom.
- Provides competitive alternatives to small & medium sized businesses and residential customers in mid-sized cities and large city suburbs.
- TDS Metrocom operates in Illinois, Michigan, Minnesota, and Wisconsin with more than 426,000 access line equivalents.
- Facilities based carrier that invested in switches, collocation, and inter-office transport with a greater portion of its Minnesota customers served via resale and UNE-P based services.
- If the Commission does not deny Qwest's petition, TDS Metrocom is in danger of losing access to nearly a quarter of its lines in the Minneapolis market which may cause TDS Metrocom to exit that market

States Oppose The Petitions

- “The MNPUC recommends that the Commission deny the MSP Petition because the scope of relief would substantially impede or entirely eliminate telecommunications competition in the MSP MSA.”
- “The Arizona Commission would recommend that the Commission deny Qwest’s petition as pled.”
- The WUTC “recommends that the Commission deny the Seattle Petition because the scope of relief Qwest requests would substantially impede or entirely eliminate intra-modal competition in the Seattle MSA.”

States Oppose The Petitions

- COPUC: “Unbundled network elements remain a necessary input into the competition present in today’s local exchange markets in the Denver MSA. Eliminating the unbundling requirement is not likely to increase competition in the short run. Instead, it will threaten the existence of many of the competitive alternatives available to the business customers served by CLECs today.”

- CO Office of Consumer Counsel: “competition in Colorado is not sufficient to support a finding pursuant to 47 U.S.C. § 160(a)(1)-(3) and (b) that it would be in the public interest; or that ‘mass market’ consumers (i.e. residential and small business consumers) in the Denver MSA would be adequately protected if Qwest is granted forbearance from further regulation; or that such forbearance will promote competitive market conditions;”

Direct and Quantifiable Adverse Impact of Forbearance

- QSI Study
  - Wholesale price increases would in turn lead to immediate price increases for consumers.
  - $1.14 Billion in Annual Retail Wireline Expenditure
    - Mass Market Voice - $ 280 Million
    - Mass Market Broadband - $296 Million
    - Enterprise Voice - $ 109 Million
    - Enterprise Broadband $456 Million

Qwest Has Shown No Wire Center Level Evidence of “Coverage”

- Qwest has not provided any wire center analysis of independent facilities-based competition.
  - “using such a broad [MSA] geographic region would not allow [the Commission] to determine precisely where facilities-based competition exists....” Omaha Order, n. 186.
- No “close correlation” for form 325 data
- Forbearance is appropriate only “when the evidence ... is presented on a basis that allows [the Commission], in an administrable fashion and consistent with the Commission’s precedent, to make findings on a wire center basis....” Omaha Order, n. 61.

Qwest Has Not Shown Sufficient Competition In The Residential Market - Cable and VoIP

- Cable Information is inadequate or missing:
  - No actual cable line share information on MSA or any level
  - “Availability” of cable telephony insufficient
  - Qwest updates rely on “estimated cable” Comcast Digital Voice
  - White pages methodology has not been relied on in other UNE forbearance proceedings.
  - Qwest: “imperfect result,” “an approximate calculation,” “good faith effort,” “agrees that its listing/line ratios would not be exactly the same as competitors”
  - Used “region wide” ratios
- Communications connections” measures Qwest’s share of the Internet access market.
- Over-the-top VoIP rejected by the Commission in Omaha, Verizon 6-City Forbearance

Qwest Has Not Shown Sufficient Competition In The Residential Market - Cable and VoIP west Has Not Shown

- Mikkelsen Study: There is little basis for determining that mobile wireless services are part of the relevant market for wireline services.
  - DOJ Merger Guidelines would not produce this result.
  - Wireless voice not a substitute for wireline broadband.

- Gillan Study: Assuming “cut-the-cord” wireless is considered:
  - the lower bound of the CDC estimates should be used
  - the estimate should exclude groups that are not representative, such as college age respondents.

- “Cut-the-cord wireless” must exclude Qwest wireless subscribers

Qwest Has Not Shown Sufficient Competition In The Residential Market - Retail Line Loss

- The Commission has rejected showings of loss of retail lines.
  - Line loss is not equivalent to robust independent facilities-based competition.
  - “we reject Verizon’s attempt to demonstrate that a particular MSA is competitive by calculating percentage reductions in retail lines. There are many possible reasons for such decreases unrelated to the existence of last mile facilities-based competition.” Verizon Six City Order, para. 32.
  - Qwest’s updated explanation of line loss is unconvincing.

Qwest Has Not Shown Competition in the Enterprise Market

- Qwest double counts categories of competitors.
  - CLECs overlap fiber collocators, and systems integrators.

- Other information unpersuasive:
  - “we do not find persuasive any of the competitive fiber network data that Verizon has filed … including fiber network maps, the number of route miles on these networks; the number of wire centers in an MSA that a competing fiber provider can reach; or the materials from competitors’ web-sites describing their service offerings and territories.” Verizon Six City Order, para. 40.

- Cable is not a serious player in the enterprise market.
  - Comcast
  - CLEC churn studies show that CLECs rarely lose competitors to cable.

- GeoResults 2008 Study:
  - Facilities-based CLECs connect with their facilities to a miniscule number of commercial buildings.
  - Facilities-based CLECs serve a very small portion of total addressable demand with their facilities.

Qwest Has Not Shown Viable Wholesale Markets

- CLECs dependent on UNE-L and EELs.
- There is no significant source of wholesale competition for loops in any of the four MSAs.
  - No cable company offers competitive access to loops.
  - Fiber-based CLECs have a miniscule number of "lit" buildings, and even if building laterals to every building along a route was feasible (which it is not) they would still cover on a small percentage of the market.
- Qwest has not made reasonable wholesale offerings when UNEs are eliminated.
  - Omaha:
    - DS0 monthly recurring: 30% increase
    - DS1 NRC - 360% increase
    - DS1 monthly recurring: 72% to 120%
    - DS3 monthly recurring: 117% to 178%
  - TRRO:
    - Qwest offers the same tariffed RCP discounts.

The Commission Should Not Rely On Predictive Judgments of Wholesale Competition

- The Omaha prediction has proved erroneous.

- Qwest has used pricing flexibility to raise special access prices 30%-40% in Omaha, which would not be possible in a competitive market.

- McLeodUSA has requested Nebraska PSC approval “to cease providing local voice services in Nebraska to all residential and small business customers in response to the grant of forbearance by the FCC.”

Public Interest Considerations

- Technology at risk:
  - Access to copper pairs promotes innovations like IPTV over copper.
- MPUC Staff: Qwest provides no evidence that unbundling has stifled investment
  - CLECs have invested $500 million just in Minnesota.

Public Interest Considerations

- UNE forbearance would harm consumers:
  - Many users would face substantial and immediate rate increases upon withdrawal of UNE access.
  - Consumers would lose access to existing and forthcoming UNE-based advanced services, including DSL, Ethernet, and video.
- Eliminating competitors from the market and reducing consumer choice will not enhance competition.

Conclusion

- Facilities-based competition in the four MSAs does not approach the levels found in Omaha and Anchorage.
- The Petitions should be denied in all four markets.
- Forbearance should not be granted because Qwest fails the statutory tests.