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VIA ECFS

NOTICE OF EX PARTE PRESENTATION

July 9, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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*

Dear Ms. Dortch:

Yesterday, Greg Kennan of One Communications Corp., Julia Strow, representing Cbeyond, Inc., and the undersigned met with John Hunter, Legal Advisor to Commissioner Robert McDowell, to discuss the reasons that the petitions in the above-captioned proceeding should be denied. The attached documents formed the basis of the presentation, except that none of the highly confidential information contained in the documents was discussed at the meeting.

The attached presentation documents have been redacted for public inspection. In accordance with the Second Protective Order in this proceeding, one copy of the highly confidential version of the presentation documents is being filed with the Secretary's Office under separate cover, two copies of the redacted version of the presentation documents are being filed with the Secretary's Office under separate cover, one copy of the highly confidential version is being provided electronically to Denise Coca and Tim Stelzig, and per his request, one copy of the highly confidential version is being provided electronically to Gary Remondino.

Please do not hesitate to contact me if you have any questions or concerns about this submission.

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Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

*Attorneys for Cbeyond, Inc., and
One Communications Corp.*

Attachment

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PRESENTATION REGARDING QWEST PETITIONS FOR FORBEARANCE FROM
DOMINANT CARRIER AND UNBUNDLING REGULATION IN THE DENVER,
MINNEAPOLIS, PHOENIX, AND SEATTLE MSAs
WC Dkt. No. 07-97
(July 8, 2008)

- I. FORBEARANCE SHOULD NOT BE GRANTED FOR UNES NEEDED TO SERVE BUSINESS CUSTOMERS UNLESS THE ILEC MEETS THE RELEVANT NETWORK COVERAGE AND MARKET SHARE TESTS IN THE BUSINESS MARKET.
- A. As The Commission Recognized In The *6 MSA Order* (see ¶ 37, n.118), Forbearance From Loops And Transport UNES Needed To Serve Business Customers Should Not Be Granted Unless Facilities-Based Competitors' Network Coverage In The Business Market Exceeds 75 Percent In A Particular Wire Center.
- B. As The Commission Also Implicitly Recognized In The *6 MSA Order* (see ¶ 37), Forbearance From Loops And Transport UNES Needed To Serve Business Customers Should Not Be Granted Unless Facilities-Based Competitors Have Achieved Sufficient Market Share (The Commission Has Made Public Its Preference For 50 Percent As The Cut-Off Point) In The Retail Market For Business Services.

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II. THE COMMISSION SHOULD UNDERTAKE A MEANINGFUL ANALYSIS OF THE WHOLESALE MARKET.

A. The Commission's Existing Framework For Analyzing The Wholesale Market In UNE Forbearance Proceedings Is Based On An Unexamined Assumption: that the presence of a *single* facilities-based competitor with significant market share in the voice market actually gives an ILEC the incentive to offer service to wholesale third-party competitors.

1. Does Qwest charge lower prices for special access in Omaha than in other markets in which it faces less facilities-based retail competition? **The answer is no.** How is it therefore that the Commission's wholesale test is sound?

B. The Commission Has Failed To Apply Its Wholesale Analytical Framework (Which Is Itself Flawed) In The Business Market.

1. If "very high levels of retail competition that do not rely on the ILEC's facilities" are necessary to give the ILEC an incentive to offer loops and transport on reasonable terms and conditions, **then this must also be true for loops and transport needed to serve business customers.**

2. **The logic of the Commission's own standard therefore dictates that proof of significant levels of retail competition** in the provision of xDSL used by small businesses and DS1/DS3-based services **should be required before forbearance from unbundling is granted for DS0 loops used to provide basic voice and xDSL service, for DS1 loops, or for DS3 loops.**

C. In All Events, The Commission Should Separately Examine The Extent To Which There Is Competition In The Wholesale Market *Per Se*, Rather Than Relying On The Retail Market As A Proxy For The Wholesale Market. In examining the wholesale market, the Commission should consider the following:

1. Whether competitive providers of facilities-based wholesale services offer service over their own loop facilities to 75 percent of the end user locations in an MSA and in a particular product market (e.g., DS0, DS0 as inputs for xDSL, DS1, and DS3).

2. Whether competitive providers of facilities-based wholesale services have achieved substantial market shares (e.g., 50 percent) in the wholesale market in the MSA.

3. Whether the ILEC's ability to leverage its market power in the provision of wholesale services in other MSAs prevents the development of viable wholesale competition in the MSA in which forbearance is sought.

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4. Whether the ILEC's wholesale prices have declined meaningfully in response to facilities-based competition in the wholesale market. As the Integra analysis of Qwest's special access prices in Phoenix demonstrates, this is not the case in Phoenix.

QWEST DS1 CHANNEL TERMINATION SPECIAL ACCESS PRICES IN PHOENIX UNDER ITS MOST STEEPLY "DISCOUNTED" TERM PLAN (60 MONTHS)

Monthly Zone 1 Price Under The 60 Month Plan <u>As Of 10/31/02</u>	Monthly Zone 1 Price Under The 60 Month Plan <u>As Of 8/30/04</u>	Monthly Zone 1 Price Under The 60 Month Plan <u>As Of Today</u>	Qwest <u>Price Cap</u> Monthly Price Today	Qwest Zone 1 <u>UNE</u> DS1 Loop Monthly Price In Phoenix Today
\$100	\$115	\$120	\$96	\$67.39

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III. THE COMMISSION SHOULD FOLLOW SOUND COMPETITION POLICY PRINCIPLES IN ANALYZING THE RELEVANCE OF CUT-THE-CORD WIRELESS CUSTOMERS.

- A. There Is No Evidence That Mobile Wireless Service Belongs In The Wireline Mass Market Voice Product Market; The Commission Itself Recognized This Fact Just Two Months Ago:
1. **“[T]he majority of households do not view wireline and wireless services to be direct substitutes.”** *CETC Interim Cap Order* ¶ 21
 2. In reaching this conclusion, the Commission rejected CTIA’s use of the CDC May 2007 Survey relied upon by the Commission in the *6-MSA Order* as evidence that mobile wireless is a substitute for wireline voice service. **As the Commission explained in rejecting CTIA’s argument, the CDC May 2007 Survey’s finding that nearly 13 percent of the population had cut the cord “fails to demonstrate that wireless ETCs are a complete substitute for wireline ETCs.”** *See id.* n.63.
 3. In all events, **there is no evidence that the availability of wireless service would constrain a hypothetical wireline monopolist’s ability to unilaterally impose a “small but significant and nontransitory” increase in price” on those customers that subscribe to wireline service today.**
 - a. Customers that have cut the cord in the past are irrelevant to the analysis because the question is whether a hypothetical monopolist could increase prices paid by existing wireline customers.
 - b. According to a Verizon survey, most existing wireline customers do not view wireline and wireless as substitutes: **83 percent of landline subscribers “intend to continue using their landline home phone indefinitely” and cited reliability and safety as the reasons.** *See* Cbeyond et al. May 7, 2008 *Ex Parte* at 6-7.
- B. Even If Mobile Wireless Service Does Belong In The Wireline Mass Market Voice Product Market, Services Offered By ILEC-Affiliated Mobile Wireless Providers Both Inside And Outside Their ILEC Territories Should Be Excluded From The Product Market.
1. Both Verizon Wireless and AT&T Mobility market and price their services the same way throughout the country.
 2. These national pricing plans are evidence that AT&T Mobility and Verizon Wireless market and price their services outside of their ILEC territories in the same way that they market and price their services within their ILEC territories.

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3. Accordingly, if the Commission does not view ILEC-affiliated mobile wireless service as a wireline substitute within the ILEC territory (the conclusion reached in the *6 MSA Order*), it must treat them the same way when offering service outside of the ILEC territory.
- C. Under No Circumstances Should Mobile Wireless Service Be Deemed A Substitute For Wireline Data Services Such As ADSL, DS1s, and DS3s.
1. It is clear that Qwest views itself to be unconstrained by any competition in the provision of xDSL service.
 2. **Qwest CEO Ed Mueller recently stated that Qwest views demand for its wireline data services to be “inelastic” and that it plans to increase prices for these services by as much as 11 percent.**

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IV. THE COMMISSION SHOULD NOT INCLUDE LINES SERVED *VIA* QPP/QLSP OR RESALE IN THE CALCULATION OF FACILITIES-BASED COMPETITORS' MARKET SHARE.

- A. QPP/QLSP Offerings Include UNE Loops And Should Therefore Not Be Considered.
 - 1. **“With the exception of Omaha . . . QPP/QLSP relies upon an unbundled loop.”** Qwest Phoenix Pet. n.21.
 - 2. The Commission has appropriately stated that it will not rely on UNE-based competition as the basis for eliminating UNEs (*see, e.g., 6 MSA Order ¶¶ 37, 42*).
- B. Resale-Based Competition Is Qualitatively Different From, And Yields Far Fewer Consumer Benefits Than, UNE-Based Competition; Therefore, The Commission Should Not Consider Resale Competition When Assessing UNE Forbearance Petitions.

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- V. THE DATA IN THE RECORD DEMONSTRATES THAT THERE IS INSUFFICIENT COMPETITION IN ANY OF THE FOUR MSAs TO WARRANT FORBEARANCE.
- A. Qwest itself has admitted that it cannot, under any scenario, come close to meeting the 50 percent market share threshold even in the residential market in Denver, Minneapolis, or Seattle.
 - B. The data in the record demonstrate that there is insufficient facilities-based competition in Phoenix to meet the Omaha/Anchorage test in the residential market.
 - C. The data in the record demonstrate that the level of facilities-based competition in the Phoenix business market does not even come close to meeting the threshold required for forbearance.

THE RECORD IN THE QWEST 4-MSA FORBEARANCE PROCEEDING SHOWS AN INSUFFICIENT LEVEL OF FACILITIES-BASED COMPETITION IN THE BUSINESS MARKET IN EACH OF THE RELEVANT MSAs

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