

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, Julia Strow, representing Cbeyond, Inc., Russ Merbeth of Integra Telecom, Inc., Greg Kennan of One Communications Corp., and the undersigned met first with Commissioner Copps and his Legal Advisor, Scott Deutchman, and then with Commissioner Adelstein and his Legal Advisor, Renée Crittendon, to discuss the reasons that the petitions in the above-captioned proceeding should be denied. A copy of the materials on which these discussions were based is attached.

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

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

*Counsel for Cbeyond, Inc.,
Integra Telecom, Inc., and
One Communications Corp.*

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cc (via email): Commissioner Adelstein
Commissioner Copps
Renée Crittendon
Scott Deutchman

**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.**

II. 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.

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 Price Cap Monthly Price Today | Qwest Zone 1 UNE DS1 Loop Monthly Price In Phoenix Today |
|--|---|---|--|---|
| \$100 | \$115 | \$120 | \$96 | \$67.39 |

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 concluded that **the CDC May 2007 Survey 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.
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: **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.**

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.