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ATTORNEYS AT LAW

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Ex Parte

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

Re: ***Petitions of the Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Seattle, Denver, Phoenix, and Minneapolis-St. Paul Metropolitan Statistical Areas*, WC Docket No. 07-97**

Dear Ms. Dortch:

Qwest Corporation's ("Qwest") forbearance petitions are predicated on an assertion that consumers have access to "a wide range of competitive alternatives" to Qwest's services in each of the Metropolitan Statistical Areas ("MSAs") at issue.[1] The record belies this assertion, particularly with respect to the wholesale market, where there are *no* alternative wholesale providers other than Qwest.

Qwest cites competition from both wireline CLECs and systems integrators in its petitions and specifically mentions EarthLink, Inc.'s ("EarthLink") subsidiary New Edge Networks ("New Edge").[2] But neither EarthLink nor New Edge can be considered a facilities-based alternative to Qwest's services. EarthLink and New Edge have zero loop facilities in these

1 *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Seattle, Washington MSA* at 5 (filed Apr. 27, 2007) ("*Seattle Petition*"); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Colorado MSA* at 5 (filed Apr. 27, 2007) ("*Denver Petition*"); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis-St. Paul, Minnesota MSA* at 5 (filed Apr. 27, 2007) ("*Minneapolis-St. Paul Petition*"); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona MSA* at 5 (filed Apr. 27, 2007) ("*Phoenix Petition*") (all petitions cited herein were filed in FCC WC Docket No. 07-97).

2 *See, e.g., Seattle Petition* at 25; *Minneapolis-St. Paul Petition* at 25.

markets. Accordingly, as suppliers of telecommunications services, neither EarthLink nor New Edge presents the kind of independent, facilities-based competition to Qwest that the Commission has looked to in granting similar forbearance requests.

Moreover, as purchasers, EarthLink and New Edge also see the lack of alternative facilities to those provided by Qwest, both in the mass market *and* the enterprise market. New Edge is an innovative service provider, specializing in the provision of broadband IP transmission and private networks to small- and medium-sized businesses, ranging from gas stations to franchise restaurants to mall kiosks, which now rely on New Edge services when it comes to inventory, payroll, purchasing, communications, and customer transactions. As a purchaser of telecommunications services in the wholesale market, New Edge relies *100 percent* on Qwest loops – either through direct purchases from Qwest or through indirect purchases of such loop services through a competitive local exchange carrier or access provider that leases Qwest facilities and sells them to New Edge.

For the wholesale market in particular, therefore, eliminating the availability of reasonably priced, cost-based UNE loops – and the resulting competition in the wholesale market from UNE-based competitive providers – cannot meet the statutory criteria for forbearance. If the FCC grants Qwest's petitions, there will be no competitors in the market to discipline Qwest's wholesale pricing, at least in the areas where EarthLink and New Edge are purchasing services. As the only player in the market, Qwest will lack any incentive to make reasonably priced wholesale options available. New Edge will only be able to purchase connectivity and serve its small- and medium-sized business customers pursuant to special access rates, which themselves may be subject to further deregulation.[3] Thus, for the wholesale market, there is no doubt that the continued availability of cost-based access to unbundled copper loops is necessary to ensure just and reasonable rates, protect consumers, and further the public interest.

Furthermore, the QPP platform services do not allow EarthLink and New Edge to provide the services their customers seek. For EarthLink, it needs only access to the ILEC loop, as it uses its own electronics (or those of a partner) to provide the voice and data services – which allows EarthLink to differentiate its services from both Qwest and the local cable company. Similarly, New Edge provides value by being able to connect its network and service intelligence to the loops, and does not need to purchase those elements from Qwest. These services are not viable wholesale alternatives, and in any event do not discipline Qwest's prices since, as a practical matter, Qwest sets its QPP rates at any level it chooses.

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3 Not only has Qwest sought such deregulation as a part of this petition, but pricing flexibility for channel terminations – i.e., the special access loop connection from the end office to the customer's premises – can be granted based on the number of end offices with collocators (even only a single collocator) using transport from that office. *See* 47 C.F.R. § 69.711. These collocations could be solely for transport services, or for accessing Qwest's UNE loops, with no alternative loop facilities available.

Loop unbundling remains critical to allowing providers such as EarthLink to offer a competitive voice and high-speed broadband alternative to consumers. Consumers benefit from having these independent choices in the marketplace, and it is not in the public interest to allow Qwest to push these alternative voice/broadband services from the market.

Sincerely,

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