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EX PARTE OR LATE FILED



VIA COURIER

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FILED/ACCEPTED

JUL 22 2008

Federal Communications Commission  
Office of the Secretary

EX PARTE

July 22, 2008

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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:

Qwest Corporation hereby submits the attached *ex parte* and request for confidential/highly confidential treatment (pursuant to the First Protective Order and the Second Protective Order) of certain confidential/highly confidential information included in the associated *ex parte*, in the above-captioned proceeding.

One original copy of the non-redacted version is being submitted; and two original copies of the redacted version are being submitted. For both the redacted and non-redacted versions, an extra copy is provided to be stamped and returned to the courier. Both the redacted and non-redacted versions of the *ex parte* are being served on Staff of the Commission's Wireline Competition Bureau as indicated below. This cover letter does not contain any confidential/highly confidential information.

If you have any questions concerning this submission, please contact me using the information reflected in the above letterhead.

Sincerely,

/s/ Melissa E. Newman

Attachments

No. of Copies rec'd 041  
List ABCDE

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July 22, 2008

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cc: (via e-mail)

Denise Coca ([denise.coca@fcc.gov](mailto:denise.coca@fcc.gov))

Jeremy Miller ([Jeremy.miller@fcc.gov](mailto:Jeremy.miller@fcc.gov))

Tim Stelzig ([tim.stelzig@fcc.gov](mailto:tim.stelzig@fcc.gov))

Gary Remondino (two hard copies of the non-redacted version & via  
[gary.remondino@fcc.gov](mailto:gary.remondino@fcc.gov))

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Qwest  
1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202  
Phone 303-383-6653  
Facsimile 303-896-1107

Daphne E. Butler  
Corporate Counsel

VIA COURIER

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EX PARTE

July 22, 2008

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
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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:

Qwest Corporation ("Qwest") hereby requests confidential/highly confidential treatment of certain information included in the associated attachment. The confidential/highly confidential information includes internal confidential/highly confidential Qwest data as to market share served in the Phoenix Metropolitan Statistical Area. It also reflects confidential subscriber information provided by Cox and confidential market share information from TNS Telecoms.

The confidential information is submitted pursuant to the June 1, 2007 First Protective Order (22 FCC Rcd 10129, DA 07-2292) in WC Docket No. 07-97. The highly confidential information is submitted pursuant to the June 1, 2007 Second Protective Order (22 FCC Rcd 10134, DA 07-2293) in WC Docket No. 07-97. As required by the First Protective Order and the Second Protective Order, the confidential/highly confidential version (that is, the non-redacted version) is marked **CONFIDENTIAL & HIGHLY CONFIDENTIAL – SUBJECT TO FIRST PROTECTIVE ORDER AND SECOND PROTECTIVE ORDER IN WC DOCKET NO. 07-97 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**. Pursuant to both the First Protective Order and the Second Protective Order, Qwest requests that the non-redacted version of this *ex parte* (containing confidential and highly confidential information) be withheld from public inspection.

Qwest considers the confidential information as being competitively-sensitive in nature. This type of information is "not routinely available for public inspection" pursuant to both Federal

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Communications Commission ("Commission") rules 47 C.F.R. §§ 0.457(d) and 0.459 (as Qwest explained and for which it provided legal justification in its Request for Confidential Treatment and Confidentiality Justification submitted with its four Petitions for Forbearance on April 27, 2007).

Qwest is simultaneously submitting, under separate covers, the non-redacted and redacted versions of this *ex parte*. The redacted version of the *ex parte* is marked "**REDACTED - FOR PUBLIC INSPECTION**". Both the redacted and non-redacted versions of the *ex parte* are the same except that in the non-confidential version the confidential information in the attachment has been omitted. This letter does not contain any confidential information.

If you have any questions concerning this submission, please call me on 303-383-6653.

Sincerely,

/s/ Daphne E. Butler

Attachment

**REDACTED - FOR PUBLIC INSPECTION**



**Qwest**

1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202  
Phone 303-383-6653  
Facsimile 303-896-1107

**Daphne E. Butler**  
Corporate Counsel

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**EX PARTE**

July 22, 2008

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 July 15, 2008, Qwest Corporation (“Qwest”) filed an *ex parte* in this docket providing Qwest’s “share” of the Phoenix Metropolitan Statistical Area (“MSA”), calculated by precisely following the Federal Communications Commission’s (“Commission”) “share” calculations outlined in Appendix B of the *Verizon Six MSA Order*.<sup>1</sup> Part of this calculation involves determining Qwest’s portion of “cut-the-cord” wireless customers. Qwest has already provided all of the data needed to replicate Appendix B, by providing retail and wholesale landline subscriber data from its own billing records and by providing Qwest’s share of wireless in the Phoenix MSA from TNS Telecoms.

This *ex parte* is intended simply to confirm the accuracy of the data already on the record, and to note that certain of the information used in Appendix B of the *Verizon Six MSA Order* is available to the Commission without any assistance from Qwest. Qwest satisfies the

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<sup>1</sup> *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21308 n. 89 (2007) (“*Verizon Six MSA Order*”), *pet. for rev.* filed Jan. 14, 2008 (D.C. Cir. No. 08-1012).

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Commission's stated market-share requirement for forbearance in the Phoenix MSA even if cord-cutting subscribers to Qwest-branded wireless services are attributed to Qwest. Finally, although it is unnecessary for the Commission to reach the issue if it grants forbearance, those subscribers should not in fact be attributed to Qwest in any event, for the reasons discussed below.

In footnote 7 of Appendix B, the Commission stated:

As in prior proceedings, we use the National Resource Utilization and Forecast (NRUF) database to estimate Verizon's market share of mobile wireless numbers in the geographic area at issue.

The Commission examined NRUF data to quantify, for each MSA: (1) the number of Verizon Wireless telephone numbers and (2) the number of total wireless telephone numbers. The Verizon telephone numbers were divided by the total number of wireless telephone numbers to derive Verizon Wireless' "share" of all wireless telephone numbers in each MSA. This percentage was used to derive the Verizon "cut-the-cord" estimate, which was included in Verizon's share.

Qwest differs from Verizon in that Qwest simply resells Sprint Wireless service rebranded as Qwest Wireless, whereas Verizon owns its wireless business and provides service using its own facilities and spectrum. Therefore, Qwest Wireless telephone numbers appear as Sprint numbers, rather than as Qwest numbers, in the NRUF data. Thus, while NRUF data can be used to identify all wireless telephone numbers in a particular MSA for use as the denominator in a "percentage share" calculation, NRUF data cannot be used to identify Qwest Wireless telephone numbers to form the numerator.

Qwest has provided calculations of its "share" of the Phoenix MSA telecommunications market, following the Commission's methodology in Appendix B of its *Verizon Six MSA Order*, in *ex partes* filed on February 21, 2008, July 1, 2008 and July 15, 2008. For example, Confidential Attachment 1 to the July 15, 2008 *ex parte*, which is enclosed again here for convenience, clearly shows that Qwest has closely followed the Commission's "share" calculation outlined in the Commission's Appendix B. Qwest estimated its "share" of wireless subscribers in the Phoenix MSA at **\*\*\*begin confidential\*\*\*** **\*\*\*end confidential\*\*\***, based on data from TNS Telecoms. Qwest provided this estimate of its share of wireless subscribers with its original petitions.<sup>2</sup> Qwest then applied that factor to the total number of "cut-the-cord" wireless subscribers in the Phoenix MSA, developed via the Appendix B methodology, to derive an estimate of the number of Qwest Wireless subscribers who had "cut-the-cord." This value

<sup>2</sup> See, e.g., *Declaration of Robert H. Brigham and David L. Teitzel Regarding the Status of Telecommunications Competition in the Phoenix, Arizona Metropolitan Statistical Area*, attached to Qwest's April 27, 2007 petition at 9 n.17.

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was then added to the Qwest retail access line count for the Phoenix MSA to form the “numerator” of the Qwest “share” calculation, following the Appendix B methodology.

To the extent the Commission wishes to validate Qwest’s estimate of Qwest Wireless’ “share” in the Phoenix MSA, the Commission has the information necessary to complete that validation. On April 22, 2008, in response to a request from the Commission staff, Qwest filed an *ex parte* containing various data. In Attachment 2 to that *ex parte*, Qwest reported its Qwest Wireless subscriber counts<sup>3</sup> for the Phoenix MSA as of December 31, 2007 as **\*\*\*begin highly confidential\*\*\*** **\*\*\*end highly confidential\*\*\***.<sup>4</sup> These counts were drawn directly from Qwest’s billing systems. To independently validate that these counts are accurate, Qwest asked Sprint to report the number of wireless subscribers shown in Sprint’s billing system as being resold to Qwest in the Phoenix MSA as of December 31, 2007. On July 10, 2008 Sprint reported that it was billing **\*\*\*begin highly confidential\*\*\*** **\*\*\*end highly confidential\*\*\*** resold wireless services to Qwest in the Phoenix MSA, a number that is less than 5% different than the number shown in Qwest’s billing system as reported in Qwest’s April 22, 2008 *ex parte*. This variance is *de minimis* and explainable.<sup>5</sup> Therefore the Commission can be confident in using Qwest’s reported Qwest Wireless subscriber count in the numerator of an Appendix B “share” calculation.

Of course, the Commission is able on its own to access NRUF data for all wireless subscribers of all wireless carriers in the Phoenix MSA in order to develop the denominator in a Qwest Wireless “share” calculation, as it did in Step 2 of Appendix B of its *Verizon Six MSA Order*, and the Commission is not dependent upon Qwest to provide it with this information.<sup>6</sup> Again, if the Commission precisely follows the “share” calculations clearly outlined in Appendix B of its *Verizon Six MSA Order*, using the verified Qwest Wireless data and NRUF information

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<sup>3</sup> “Wireless subscribers” and “wireless telephone” numbers are synonymous, since each Qwest Wireless subscriber has one telephone number.

<sup>4</sup> The great majority of the Qwest Wireless subscriber counts in the Phoenix MSA are billed to residential customers. This number includes some business customers who are purchasing Qwest Wireless service, since it is being compared to wireless subscriber data from Sprint’s billing system regarding wireless services resold to Qwest. For these resold services, Sprint’s billing system does not indicate whether the service is being used by a residential or a business customer, since Sprint does not render the bill to the Qwest retail customer.

<sup>5</sup> Qwest’s agreement with Sprint is that Sprint will not remove a Qwest Wireless resold account from its billing system for at least 30 days after disconnection, whereas a disconnected Qwest Wireless subscriber is removed immediately from Qwest’s billing system. For this reason, there will always be some variance between the Qwest Wireless subscriber counts in Qwest’s and Sprint’s billing systems.

<sup>6</sup> The NRUF data that the Commission used in the *Verizon Six MSA Order* share calculation was not available to the public, just as the NRUF data to be used here is unavailable to the public.

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as described above, Qwest has satisfied the Commission's requirements for a grant of Qwest's request for forbearance in the Phoenix MSA, even insofar as cord-cutting subscribers to Qwest-branded wireless accounts are attributed to Qwest for market-share purposes.

In any event, although the Commission need not reach the issue if it grants forbearance, *no* cut-the-cord subscribers should be attributed to Qwest in the first place. As AT&T explains in its July 18, 2008 *ex parte*, nothing in this record or in the record of last year's *Verizon Six MSA Order* supports the claim that wireline-affiliated wireless providers design and market their wireless services so as to protect their landline business.<sup>7</sup> As AT&T demonstrates, any effort by a wireless carrier to protect an affiliated company's wireline customer base would be suicidal, given the large and growing number of cut-the-cord customers, the even larger number of "wireless-mostly" customers, and a highly competitive wireless market in which no national provider has even a thirty percent share of wireless subscribers.

This conclusion -- that no cut-the-cord subscribers should be attributed to a wireline business for forbearance purposes -- applies with special force to companies like Qwest that do not operate wireless networks of their own and must resell the wireless services of others. In this regard, Qwest notes that some of its opponents have argued that the Commission should not attribute resale and QPP/QLSP lines to Qwest's competitors when performing the Appendix B "share" calculation.<sup>8</sup> If the Commission adopts that line of reasoning, the -- for that reason alone -- Qwest Wireless lines should be excluded from the Qwest line counts in a "share" analysis (which would obviate the need to develop a Qwest Wireless "share" calculation) since Qwest Wireless is strictly a resold service "riding on" Sprint Nextel's network. Moreover, beginning later this summer Qwest will begin selling its consumer customers Verizon Wireless products and services.<sup>9</sup> These facts distinguish Qwest from the situation in the *Verizon Six MSA Order*

<sup>7</sup> Letter from Christopher M. Heimann, AT&T to Marlene H. Dortch, FCC, dated July 18, 2008.

<sup>8</sup> See, e.g., Gillan Associates The Irrelevance of Resale and RBOC Commercial Offers to Competitive Activity in Local Markets (May 2008), appended to Letter from Brad E. Mutschelknaus, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed May 15, 2008). These competitors claim that the pricing of such wholesale offerings protects, rather than disciplines, the incumbent's retail pricing strategy. In the *Verizon Six MSA Order*, however, the Commission found it "conservative" to attribute to Verizon's competitors those lines served via Section 251(c)(4) resale and Verizon's Wholesale Advantage product. *Verizon Six MSA Order*, 22 FCC Rcd at 21308 n. 89. Moreover, the Commission found that such an attribution "results in a reasonable estimate of the competitive LECs' share." *Id.* There are no facts before the Commission suggesting that the situation is different in the Qwest MSAs than in the Verizon MSAs.

<sup>9</sup> Qwest Reports First Quarter 2008 Results, Announces Partnership With Verizon Wireless (press release May 6, 2008)  
<http://press.qwestapps.com/index.cfm?fa=press.view&pressReleaseId=56672> (visited July 17, 2008).

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since Verizon Wireless serves customers over its own network and its own spectrum. Thus, the *Verizon Six MSA Order* does not serve as precedent requiring the Commission to count Qwest Wireless customers in Qwest's "share." To be clear, however, the Commission need not include the Qwest Wireless customers in the competitors' share for Qwest to meet the Commission's forbearance standard, as shown in the Confidential Attachments to Qwest's filing of July 15, 2008.

In short, the Commission should not count Qwest Wireless customers in Qwest's "share." To be clear, however, the Commission need not reach this issue, and specifically need not include these customers in the *competitors'* share, if it concludes that Qwest has met the Commission's forbearance standard, as shown in the Confidential Attachments to Qwest's filing of July 15, 2008.

In sum, the Commission has access to all the data it needs to replicate the Appendix B calculation. Qwest provided its share of the wireless market with its original petitions in 2007. Qwest provided its wireless line count in April of this year, in response to a question from the Commission. The Commission is not dependent upon Qwest for access to the NRUF data showing the total number of wireless lines in each of the four MSAs, and in fact, the Commission independently accessed and used this very data in Appendix B of its *Verizon Six MSA Order*. Finally, Qwest currently offers only resold wireless services. Thus, the Commission has all the data necessary to complete an "Appendix B" calculation to assess Qwest's "share" of the telecommunications market in the Phoenix MSA. Properly done, as illustrated in Confidential Attachment 1, such a calculation clearly shows that Qwest meets the Appendix B forbearance standard.

Respectfully submitted,

/s/ Daphne E. Butler

Confidential Attachment

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**QWEST APPENDIX B "SHARE" CALCULATION FOR PHOENIX MSA  
USING METHODOLOGY FROM VERIZON SIX MSA ORDER**

**Step 1:**

$Qwest + CLEC = (1-.158) * C_{telephone}$

Where,

$C_{telephone}$  = The total number of customers that have telephone service (whether wireline or wireless)

Qwest = Qwest residential local service customers

CLEC = Qwest Resold Residential Lines + Qwest Residential Platform Service Lines (QPP + QLSP) + Cable Providers Residential Access Lines

$C_{telephone} = (Qwest + CLEC)/(1-.158)$

**Qwest Residential**

(May 2008 data from 7/2/08 update filing)

**CLEC Residential**

Qwest Residential Resold Lines

(May 2008 data from 7/2/08 update filing)

Qwest Residential QPP + QLSP Lines

(May 2008 data from 7/2/08 update filing)

Cable Residential Access Lines

(Cox confidential self-reported residential lines as of June 2008)

**CLEC Residential Total**

$C_{telephone} = (Qwest + CLEC)/(1-.158)$

(assumes 15.8% cut the cord value from 5/13/2008 CDC study)

Equals:

$Wireless_{CTC} = C_{telephone} - Qwest - CLEC$

Equals:

(estimated total number of customers that have cut the cord)

**Step 2:**

**Estimated Qwest Market**

**Share  $[Qwest_{MSA}] = [Qwest + Qwest Wireless_{CTC}] / [Qwest + CLEC + Wireless_{CTC}]$**

**Equals:**

**Estimated CLEC + Competitive**

**Wireless Market Share =**

**Equals:**

Note: Qwest's estimated share of total wireless subscribers in the Phoenix MSA is:

X

Equals: