

On March 11, 2009, the NCHS released a detailed analysis of its Wireless Substitution report -- with state-specific data -- for the January-December 2007 timeframe (the year prior to the data described above).⁶² For the entire year 2007, the NCHS found that 14.7% of U.S. households were “wireless only,” while 18.9% of Arizona households were “wireless only.”⁶³ Thus, in 2007, the percentage of “wireless-only” households was over 28% greater in Arizona than in the U.S. as a whole. If we reasonably assume that the relationship of Arizona “wireless-only” households to U.S. “wireless-only” households has remained constant since 2007, the January-June 2008 “wireless-only” percentage in Arizona would be over 22% (17.5% * 128%). While the Phoenix MSA is only part of Arizona, one can certainly conclude that the percentage of “wireless-only” households is greater in Phoenix, as the NCHS has regularly found that “cord-cutting” is greater in urban areas like Phoenix than in rural areas.

To address concerns raised by the Commission as to the reliability and generality of its wireless substitution study, Qwest commissioned Market Strategies International (“Market Strategies”) to determine the penetration of wireless-only households in the Phoenix MSA.⁶⁴

⁶² The NCHS had previously found that in January-June 2007, 13.6% of households were “wireless only” and in July-December 2007, 15.8% of households were “wireless only.” The 14.7% wireless households reflects data for the entire year of 2007. Brigham Declaration ¶ 15.

⁶³ *Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007, Early Release of Estimates From the National Health Interview Survey, July-December 2007*, rel. Mar. 11, 2009 at 5. Brigham Declaration ¶ 15. In addition, the survey showed that Arizona was 14th out of 50 states (plus the District of Columbia) in the U.S. in wireless substitution; see page 3.

⁶⁴ Market Strategies International is a full-service market research and consulting firm with extensive experience in the communications, energy, financial services, healthcare, and technology sectors. Their staff is comprised of consultants, researchers, statisticians, and project managers that specialize in the areas of customer satisfaction and loyalty, market opportunity assessment, market segmentation, message and communications testing, usability evaluation, and brand assessment and management. Founded in 1989, Market Strategies is the 17th largest research firm in the U.S. according to “Honomichl Top 50,” published in the June 2008 issue of *Marketing News*. www.marketstrategies.com

Market Strategies conducted telephone interviews of Phoenix households during September and October 2008, and the survey provides results that are statistically reliable to +/- 5%. The methodology of the study is described in Exhibit 5 to the Brigham Declaration.

The results indicate that an increasing number of Phoenix residents are now “cutting the cord.”⁶⁵ In fact, 25 percent of surveyed Phoenix households reported that they are relying upon wireless services for all of their communication needs.⁶⁶ The study also shows that of households with both a wireless and wireline telephone, 51% of local calls and 66% of long distance calls are made with the wireless phone.

The findings of the Market Strategies study were corroborated by a study conducted by Nielsen Mobile, which is included as Exhibit 4 of the Brigham Declaration. Per the Nielsen study, the Phoenix metro area is a high wireless substitution market. Nielsen Mobile determined that in the first quarter of 2008, the wireless substitution rate was 17.8%, which was 1.3 percentage points higher than the national rate.⁶⁷ The study also found that wireless substitution rates were increasing at a pace of 3-4% per year which would put the national rate in the 20% range by the end of 2008.⁶⁸ Since Phoenix outpaces the national rate, the Phoenix rate would likely be in the 21-23% range which is in the same range as the “wireless-only” percentage in the Market Strategies study. Thus, Qwest would meet the market share test even if the Commission were to rely solely on the Nielsen study.

⁶⁵ Customers that have “cut the cord” have disconnected wireline telephone service and rely exclusively on wireless service for their voice telecommunications needs. Brigham Declaration ¶ 37.

⁶⁶ *Id.* ¶ 38.

⁶⁷ *Id.* ¶ 16.

⁶⁸ *Id.* ¶ 2.

It is important to note that wireless competition and the resulting “cord-cutting” has a far more significant impact on Qwest than it does on Verizon or AT&T. While Verizon and AT&T own the two largest wireless networks in the United States, Qwest does not own a wireless network. For the past several years, Qwest has provided Qwest-branded wireless service in the Phoenix MSA through a resale agreement with Sprint, utilizing the Sprint wireless network. This agreement expires in 2009, and Qwest is now offering Verizon Wireless service to Qwest customers, with billing for the Verizon Wireless service on the customer’s Qwest bill. The service is branded as Verizon Wireless, and is designed to provide Qwest wireline customers with a wireless option as part of a Qwest service bundle.⁶⁹ When a customer disconnects his or her Qwest service and becomes a wireless-only customer, Qwest will lose the customer, even if he or she subscribes to Verizon Wireless. In sum, when a Qwest customer “cuts the cord,” he or she is leaving the Qwest network. Conversely, a Verizon or AT&T customer who cuts the cord may simply be moving from the Verizon or AT&T landline network to the Verizon or AT&T wireless network.

The Market Strategies study found that 8% of Phoenix MSA households received wireless service from Qwest. However, this low share was based on interviews of customers conducted prior to the migration of all existing Qwest Wireless customers to another wireless option. When the migration is complete, there will be no Qwest Wireless customers, and Qwest will have a 0% share of the wireless market.

The Commission has recognized that “even if most segments of the mass market are unlikely to rely upon mobile wireless services instead of wireline local services today,” in order for wireless service to constrain prices for wireline service the analysis “only requires that there

⁶⁹ This arrangement is similar to the agreement Qwest has in place to offer DirecTV service as part of a bundle of services.

be evidence of sufficient substitution for significant segments of the mass market.”⁷⁰ The Commission accordingly concluded that “mobile wireless services should be included within the product market for local services to the extent that customers rely on wireless service as a complete substitute for . . . wireline service.”⁷¹

Evidence shows that, particularly in the Phoenix MSA, wireless service is another form of facilities-based competition. Wireless, both taken alone, and particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers. Data indicate that customers would have a viable alternative should Qwest attempt to raise its wireline prices. Moreover, Qwest’s extremely limited presence as a wireless service provider previously suggested that if the price of wireline service went up, few of Qwest’s customers would switch to a Qwest wireless service.⁷² Today, since Qwest is eliminating its wireless service, no customers would switch to a Qwest wireless service. Wireless competition accordingly protects against wireline price increases. In the Phoenix MSA, wireless service is viewed as a viable local service alternative by a large number of customers -- a fact made clear by the growing number of consumers who have already “cut the cord” as well as the “wireless mostly” customers who are considering “cutting the cord.” The existence of wireless alternatives constrains Qwest’s ability to raise prices for wireline basic exchange service above market levels because such an increase would likely cause many customers to replace their wireline service with a wireless phone.⁷³

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *Sunset Order*, 22 FCC Rcd at 5225-26 ¶ 34. Qwest Wireless has *****Begin Confidential End Confidential***** market share of the consumer wireless market in the Phoenix MSA. Brigham Declaration, Confidential Exhibit 14.

⁷³ Brigham Declaration ¶¶ 20-21.

Some parties have argued that wireless service should not be considered to be a substitute for wireline service because it is not *identical* to wireline service. However, it is important to understand that wireless service does not need to be identical to wireline service in order for it to serve as an *effective substitute* for wireline services that constrains Qwest’s retail wireline prices.⁷⁴

3. Wireline CLECs

In addition to Cox, a number of other non-cable CLECs are providing residential telecommunications services in the Phoenix MSA. For example, AT&T is currently offering two local telephone service plans to residential subscribers in the Phoenix MSA.⁷⁵ AT&T offers service to many customers via the purchase of Qwest Local Services Platform (“QLSP”) under a commercial contract which is posted on Qwest’s website.⁷⁶ As Qwest has demonstrated in Omaha after the FCC granted forbearance for that market, commercial services such as QLSP will remain available to CLECs to enable services such as One Rate USA to be offered to residential customers in the Phoenix MSA.

Similarly, MCI (which is now owned by Verizon⁷⁷) offers its MCI Neighborhood packaged offerings in the greater Phoenix area. It offers several service packages including the “Neighborhood Unlimited” package that includes unlimited local and long distance calling and features, and the “Neighborhood 500” package that includes 500 minutes of monthly long

⁷⁴ *Id.*

⁷⁵ *Id.* ¶ 22.

⁷⁶ *Id.*

⁷⁷ *Id.*

distance calling and features⁷⁸ Like AT&T, MCI offers the services based on the purchase of QLSP from Qwest via a commercial contract agreement.

Other CLECs operate in the Phoenix MSA strictly as resellers of Qwest's retail residential services. These providers purchase retail services from Qwest at a wholesale discount, resell the services to end users, and generally have no network facilities of their own. Resellers offering residential local exchange services in the Phoenix MSA include Arizona Dial Tone, USTel and DPI Teleconnect.

In addition to Cox, over *****Begin Confidential End Confidential***** unaffiliated CLECs are currently competing with Qwest for residential customers within the Phoenix MSA. Of this number, as of December 2008, *****Begin Confidential End Confidential*****, CLECs were serving residential customers using non-Qwest network facilities,⁷⁹ *****Begin Confidential End Confidential***** were using the QLSP⁸⁰ finished wholesale service and *****Begin Confidential End Confidential***** were reselling Qwest retail services.⁸¹

4. Over-the-Top VoIP Providers

It is useful to describe VoIP services as either "managed" or "over-the-top." Generally, cable companies such as Cox offer VoIP-based services that are non-portable and that carry

⁷⁸ *Id.*

⁷⁹ This includes CLECs that use no Qwest facilities, and LECs that purchase some UNEs from Qwest to combine with their own network assets.

⁸⁰ Qwest replaced QPP with a product, the QLSP. The QLSP product is essentially the same as the QPP product. With the exception of Omaha, where Qwest is no longer required to provide unbundled loops at Total Element Long Run Incremental Cost ("TELRIC") rates, QPP/QLSP relies upon an unbundled loop. In Omaha, Qwest includes terms and conditions for unbundled loops in the QPP/QLSP agreement and has not to date raised its unbundled loop prices when purchased as part of QPP/QLSP.

⁸¹ Qwest wholesale tracking systems, December 2008. Some of the CLECs are serving end users via more than one platform (*e.g.*, a CLEC may use both resale and QPP/QLSP to serve its customers). Therefore, one cannot add the number of CLECs using each platform in order to determine the total number of CLECs.

traffic over private managed networks, rather than the Internet. For example, when a Cox customer makes a phone call, the call is transmitted over the Cox “managed” network, using Cox facilities, rather than the public Internet. Many other companies offer “over-the-top” VoIP services, which rely on a third-party broadband connection, and transmit calls over the public Internet. These companies often offer “portable” VoIP services that can be used over any high-speed Internet connection.⁸²

VoIP telephone service is now a viable alternative to Qwest’s traditional residential service in the Phoenix MSA.⁸³ Vonage, a leading VoIP provider that heavily markets its service in the Phoenix MSA, announced that it finished the third quarter of 2008 with more than 2.6 million lines in service.⁸⁴ VoIP-based telephone offerings represent an increasing and significant form of competition for Qwest’s residence local exchange service. Numerous companies offer VoIP services in the Phoenix MSA, including 1TouchTone.com, Lingo, myPhoneCompany, Net2Phone, Packet8, Verizon VoiceWing, VoIP.com, Vonage, Magic Jack and many others.⁸⁵ All of these providers offer services with abundant features and unlimited long distance service for prices that are lower than the price of Qwest’s Choice Home offerings, and these services are available to any mass market customer in the Phoenix MSA that has high-speed broadband internet access.⁸⁶

⁸² For the balance of this discussion, “over-the-top” VoIP service is defined simply as VoIP service.

⁸³ Brigham Declaration ¶ 26.

⁸⁴ *Id.* ¶ 27

⁸⁵ See: <http://www.voip-info.org/wiki/view/VOIP+Service+Providers+Residential#NorthAmerica>.

⁸⁶ Brigham Declaration ¶ 28. Broadband Internet access is now available from a number of sources, including cable modem service, digital subscriber line, wireless broadband and satellite.

Qwest DSL service subscribers have the option of utilizing their DSL connection to subscribe to VoIP service, in lieu of traditional Qwest local exchange services. Residential and business customers within Qwest's service territory may subscribe to Qwest DSL service on a "stand-alone" basis (*i.e.*, they are not required to subscribe to standard Qwest local exchange service as a precondition to subscribing to Qwest DSL service). These customers may order VoIP telephone service from a wide range of non-Qwest VoIP providers as a replacement for Qwest basic exchange service.

Wholesale VoIP providers, such as 360networks and Level 3, are promoting the widespread availability of VoIP-based services, and are marketing services to other carriers.⁸⁷ Both 360networks and Level 3 have network facilities in the Phoenix MSA.⁸⁸ Finally, it should be noted that the VoIP market is very dynamic; the preceding discussion provides only a snapshot of VoIP-related services available in the Phoenix MSA and is not intended to represent the full range of such alternatives.

B. Enterprise Customers Have Access To A Wide Range Of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.⁸⁹ They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.⁹⁰ Accordingly, the

⁸⁷ *Id.* ¶ 31

⁸⁸ *Id.*

⁸⁹ See *Sunset Order*, 22 FCC Rcd at 5231 ¶ 46; see *In the Matter of AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5708-09 ¶ 82 (2007) ("*AT&T/BellSouth Merger Order*"), motion to withdraw petition for review granted Apr. 3, 2007 (D.C. Cir. No. 07-1009).

⁹⁰ See *Sunset Order*, 22 FCC Rcd at 5231 ¶ 46.

Commission has previously expressed its expectation that enterprise customers are aware of, and able to take advantage of, the multitude of choices available to them,⁹¹ seeking out the best-priced alternatives.⁹² In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling based on competition from Cox, the incumbent cable operator, together with “maps and other evidence” showing that other competitors have deployed their own transport facilities. The Commission also considered additional evidence that competing carriers were using wholesale alternatives to compete successfully.⁹³ As in the mass market, evidence demonstrates that “the level of facilities-based competition [in the Phoenix MSA] ensure[s] that market forces [will] protect the interests of consumers.”⁹⁴ As the Commission has previously found, numerous categories of competitors provide services to enterprise customers.⁹⁵ These include cable companies, wireless providers, CLECs, data/IP network providers, VoIP providers, system integrators, and equipment vendors.⁹⁶

Qwest is experiencing intense competition in the business market, for small, medium and enterprise business customers. Cox has become a major player in the business market, and CLECs, including AT&T, Integra, XO and many others compete with Qwest for all types of business customers in the Phoenix MSA, using both circuit-switched and VoIP technologies. CLECs are lightly regulated and intermodal competitors are typically subject to little or no regulation. Since these competitors are under no obligation to report customer in-service data, especially at the MSA level, Qwest has no ability to obtain a *precise* measurement of competitor

⁹¹ *See id.*

⁹² *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5708-09 ¶ 82.

⁹³ *Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66; *see id.* at 19448-49 ¶ 67.

⁹⁴ *See Qwest 4 MSA Order*, 23 FCC Rcd at 11733-34 ¶ 7.

⁹⁵ *Sunset Order*, 22 FCC Rcd at 5224 ¶ 30.

⁹⁶ *See id.* *AT&T/BellSouth Merger Order*, 22 FCC Rcd at 5701 ¶ 70.

“shares.” Qwest *is* able to identify the level of wholesale services purchased by CLECs from Qwest, but does not have the ability to measure the facilities-based lines and services provided by carriers that do not purchase wholesale services from Qwest. Since this actual customer in-service data is proprietary and closely held by Qwest’s competitors, it is important that the Commission seek actual business in-service access line data not only from Cox, but from other CLECs that offer business services the Phoenix MSA.

Qwest requested the research firm Harte-Hanks to provide business market share data for the Phoenix MSA so that Qwest could quantify the level of competition in the small, medium and enterprise business markets. Harte-Hanks conducted extensive interviews with over 1,500 business customers in the Phoenix MSA to determine what telecommunications services the customers are purchasing, and which carrier(s) the customers are purchasing the services from. In the interviews, each customer was asked to identify their *primary* telecommunications provider. As depicted in Confidential Exhibit 6 to the Brigham Declaration, Harte-Hanks found that for businesses with 5 to 19 employees, Qwest was the primary carrier for *****Begin Confidential End Confidential***** of business locations; for businesses with 20 to 249 employees, Qwest was the primary carrier for *****Begin Confidential End Confidential***** of business locations, and for businesses with 250 or more employees, Qwest was the primary carrier for *****Begin Confidential End Confidential***** of business locations.⁹⁷

1. Cable

While Cox is a major competitor in the residential market, it also competes vigorously with Qwest in the business market, providing a broad range of business products to small

⁹⁷ Brigham Declaration ¶ 33 and Confidential Exhibit 6.

business and enterprise customers of every size in the Phoenix MSA.⁹⁸ Cox offers voice telephone service, digital trunks, Centrex service, long distance and “toll free” services, private line service (DS1, DS3 and OC3 to OC192), transparent LAN service, virtual private network service and business video service.⁹⁹ Cox has, in fact, established a separate marketing division, Cox Business Services, that is focused specifically on the small, medium and enterprise business market segments.¹⁰⁰

While it is clear that Cox is actively marketing its services to businesses of all sizes in the Phoenix MSA, Qwest does not have Cox proprietary data regarding the actual numbers of customers and access lines Cox serves, or the buildings passed by its hybrid fiber/coaxial network. Qwest encourages the Commission to require Cox to provide updated data to the Commission regarding its enterprise subscriber and access line counts and the buildings passed by its network, to obviate the need for debate about the accuracy and sufficiency of various means of estimating the actual size of Cox’s subscriber base within Qwest’s service footprint in the Phoenix MSA.

2. CLEC Competition

In addition to Cox, there are at least 30 unaffiliated CLECs actively competing with Qwest for business customers in the Phoenix MSA, ranging from national CLECs (*e.g.*, AT&T, Verizon/MCI, XO Communications, Level 3 and tw telecom), to regional CLECs (*e.g.*, Integra,¹⁰¹ PAETEC/McLeod, 360networks). Of this number, as of December 2008, more than *****Begin Confidential End Confidential***** CLECs were serving business customers using

⁹⁸ *Id.* ¶ 34.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Integra has purchased Eschelon, Electric Lightwave and Mountain Telecommunications.

non-Qwest network facilities,¹⁰² *****Begin Confidential End Confidential***** CLECs were serving business customers via the purchase of Qwest QLSP finished wholesale services and *****Begin Confidential End Confidential***** were reselling Qwest retail services.¹⁰³

CLECs are serving business and governmental customers of virtually all sizes, and as of December 2008, at least one CLEC was providing competitive services in 100% of the wire centers in the Phoenix MSA.¹⁰⁴ Highly Confidential Exhibit 7 of the Brigham Declaration shows Qwest wholesale services purchased by CLECs -- including unbundled loops, QLSP and resale -- as of December 2008, segmented by residential and business line categories.¹⁰⁵ This exhibit shows that Qwest provides over *****Begin Confidential End Confidential***** equivalent business lines.¹⁰⁶ It is important to note that the information shown in Highly Confidential Exhibit 7 of the Brigham Declaration excludes access lines served via (1) CLEC-owned network facilities, (2) network facilities leased from non-Qwest providers, and (3) the

¹⁰² This includes CLECs that use no Qwest facilities, and CLECs that purchase some UNEs from Qwest to combine with their own network assets.

¹⁰³ Qwest wholesale tracking systems, December 2008.

¹⁰⁴ CLECs purchase Qwest wholesale services in each and every Qwest wire center in the Phoenix MSA as shown in Highly Confidential Exhibit 7.

¹⁰⁵ When a CLEC purchases UNE-L or EEL wholesale services, Qwest has no means to identify whether the CLEC is serving a business or residence customer. However, nearly all of the CLECs purchasing UNE-L and EEL focus on serving business customers. Therefore, UNE-L is attributed to the business category.

¹⁰⁶ CLECs purchase voice grade loops, DS1 loops and a very few DS3 loops. To estimate active circuits per CLEC-purchased DS1, Qwest analyzed its own use of retail DS1s in the Phoenix MSA and found that, on average, *****Begin Confidential End Confidential***** circuits, or *****Begin Confidential End Confidential***** of the 24 DS0 channels were being utilized. Thus, for purposes of this analysis, Qwest conservatively assumes that each DS1 loop is equivalent to 20 utilized circuits (83% utilization). Similarly, Qwest assumes that each DS3 loop is equivalent to 550 utilized circuits (83% utilization). When Qwest sells a UNE-L, it does not know whether the loop is used to serve a business or residence customer. However, since most of the CLECs that purchase UNE loops and EEL focus on serving business customers, UNE-L loops are assumed to be business loops in this analysis.

purchase of special access service from Qwest. Therefore, this data represents only a subset of CLEC lines in service in the Phoenix MSA.

As previously discussed, to the extent CLECs are serving business customers in the Phoenix MSA utilizing their own networks or by purchasing wholesale services from a non-Qwest provider, Qwest has no means to obtain precise in-service access line counts. However, each individual CLEC does have specific knowledge of the customers it serves, its number of access lines, and how its services are provisioned. In order to develop a clear and reliable record in this case, Qwest encourages the Commission to seek access line data directly from the CLECs serving the Phoenix MSA -- at a minimum from the largest CLECs serving the Phoenix MSA -- Cox, AT&T, Verizon, Integra, tw telecom, PAETEC/McLeod and XO.

A significant amount of fiber optic cable has been placed by competitive service providers (such as AT&T, Integra, Salt River Project, XO and others) in the Phoenix MSA. These facilities allow providers to bypass Qwest facilities, and may be used to provide retail services to business customers or wholesale services to other carriers. According to GeoTel,¹⁰⁷ approximately *****Begin Confidential End Confidential***** miles of fiber, owned by approximately 25 unaffiliated providers,¹⁰⁸ is now in place in the Phoenix MSA.¹⁰⁹ In addition,

¹⁰⁷ "GeoTel Communications, Inc. is the leading provider of telecommunications infrastructure data in a geographic information system (GIS). GeoTel's unique business strategy implements and converges the mapping of telecommunications fiber and other telecommunications infrastructure with GIS technologies. These two items integrated into one digital data set gives leverage and insight into the competitive metropolitan fiber optic landscape across America." See: http://www.cmcstore.com/productcart/pc/viewCat_h.asp?idCategory=66.

¹⁰⁸ Excluding fiber owned by Qwest and Qwest's affiliates.

¹⁰⁹ Source: GeoTel, August 2008. GeoTel continually updates its data regarding fiber-based competitors and provides updated data approximately every six months. However, GeoTel does not possess complete data regarding each fiber-based competitor, and the data reported here is therefore likely to be understated. For instance, SRP Telecom reports at its current website that it owns 950 fiber route miles in the Phoenix MSA (see

competitive fiber is now being used to serve over *****Begin Confidential** End
Confidential*** buildings in the Phoenix MSA. Over *****Begin Confidential** End
Confidential*** commercial buildings in the Phoenix MSA with over \$1,000 in monthly telecommunications spending are within 1,000 feet of an existing non-Qwest fiber route.¹¹⁰
Further, GeoTel found that *****Begin Confidential** End **Confidential***** of the total number of commercial buildings generating between \$1,000 and \$5,000 in monthly telecom spending are within 1,000 feet of a competitive fiber route, and *****Begin Confidential** **End Confidential***** of the commercial buildings generating over \$5,000 in monthly telecom spending are within 1,000 feet of a competitive fiber route. This means that most “unlit” buildings could be “lit” simply by extending a lateral facility less than 1,000 feet from a fiber ring.

Confidential Exhibits 8A and 8B of the Brigham Declaration contains two maps prepared by GeoTel. The first map provides an overview of the location of competitive fiber and competitive fiber-lit buildings within the greater Phoenix area. The second map provides a “close up” view of the same data for a subset of the MSA where competitive fiber deployment is the most extensive.¹¹¹ It may be readily observed that the Phoenix MSA is very saturated with competitive fiber facilities. Please see the Brigham Declaration for a description of the wireline CLECs serving business customers in the Phoenix MSA.

<http://www.srpnet.com/telecom/wireline.aspx>), a number significantly higher than the value reported by GeoTel for SRP Telecom.

¹¹⁰ Source: GeoTel, August 2008.

¹¹¹ Again, while GeoTel continually updates its competitive fiber data, it does not account for all fiber currently in place in the Phoenix MSA and therefore understates the true extent of the competitive fiber that currently exists in the market.

3. VoIP Competition

Adoption of VoIP by the business sector is on the rise, and nearly all of the major providers competing with Qwest for business customers in the Phoenix MSA offer VoIP-based services. For example, McLeod/PAETEC offers VoIP on either a Hosted IP Telephony basis or via a Dynamic IP Service that integrates with the customer's existing equipment.¹¹² XO also offers two VoIP products for business.¹¹³

Global Crossing offers enterprise customers "fully managed, converged IP solutions designed to seamlessly combine data, voice, video and multimedia applications on a single IP-based platform."¹¹⁴ Level 3 claims that its Level 3[®] Enterprise IP Trunking service "allows businesses with IP PBXs to extend the benefits of Voice over IP (VoIP) convergence from their LAN to the WAN and the Public Switched Telephone Network (PSTN)." AT&T offers network and premise-based VoIP solutions.¹¹⁵ And Verizon offers a variety of VoIP solutions that can be "mixed and matched for a total solution that complements [the customer's] existing technology" so that customers "can migrate to VoIP at [their] own pace with the peace of mind that comes from integrated, state-of-the-art security and professional expertise."¹¹⁶

Clearly, VoIP is the technology of the future for the business market segment. Business customers are demanding VoIP solutions today, and business service providers are meeting those demands in the Phoenix MSA.

¹¹² Brigham Declaration ¶ 47.

¹¹³ *Id.*

¹¹⁴ *Id.* ¶ 48.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

C. Wholesome Customers Have Access To A Wide Range Of Competitive Alternatives

In addition to the many competitors that are vying for *retail* customers in the Phoenix MSA, there is also a growing class of carriers that offer *wholesale* services to other communications carriers as a direct alternative to Qwest wholesale services. These carriers -- many of whom have their own fiber network in the Phoenix MSA -- offer dark fiber, wholesale carrier access, wholesale transport, end-user connectivity and finished telecommunications services for use by other telecom providers. In fact, AT&T, Covad, Cox Arizona, Eschelon/Integra, Global Crossing, Level 3, McLeodUSA/PAETEC, Time Warner Telecom of Arizona (tw telecom), Verizon/MCI and XO Communications have all self-reported to the FCC that they are offering “carrier’s carrier” services to other telecommunications service providers.¹¹⁷

It must be emphasized that, as described in the Brigham Declaration, many wholesale providers own fiber facilities in the Phoenix MSA, and these providers actively market the use of these networks to other carriers. In many cases, these fiber networks provide “last mile” access to buildings in the Phoenix MSA, allowing the purchaser to completely bypass Qwest facilities. The Brigham Declaration provides a discussion of the wholesale offerings of a representative subset of these carriers, which is summarized below.

Cox Communications now offers its “Carrier Access” loop and transport services to other carriers in the Phoenix MSA. These services -- offered over Cox’s own network -- represent a direct substitute for Qwest unbundled network elements and carrier access services.¹¹⁸ Cox

¹¹⁷ Brigham Declaration ¶ 49. *Telecommunications Provider Locator*, Industry Analysis & Technology Division, Wireline Competition Bureau, Table 3, September, 2007. See: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-276470A1.pdf.

¹¹⁸ Brigham Declaration ¶ 51.

offers private line services from the DS-1 level to the OC-192 level and carrier interconnection at the OC-n level. It is critical to understand that Cox is providing a “last mile” loop option as well as interoffice transport option to carriers. Thus, other carriers can use the Cox network to completely bypass the Qwest network, connecting individual buildings to a point of presence (“POP”) or other carrier location in the Phoenix MSA.

SRP Telecom (“SRP”), based in Tempe, has a very extensive fiber network in the Phoenix MSA that is used to provide dark fiber and carrier access services to other providers. SRP is a subsidiary of Salt River Project, which is a major electric utility provider that has served the Phoenix metropolitan area for over 100 years. It has utilized its preexisting utility rights-of-way to extend the reach of its extensive fiber optic network within the Phoenix MSA. SRP’s website provides a map that defines the scope of its 950 route mile fiber network in the greater Phoenix metropolitan area, which covers a 2,900 square mile service territory and all or part of 15 cities. The SRP network serves 50 on-net commercial buildings, 20 central offices and other points-of presence, and is within reach of many additional businesses in the Phoenix MSA. The SRP non-confidential fiber route map -- which is included as Exhibit 9 to the Brigham Declaration -- shows many on-net or near on-net buildings and central offices -- demonstrates that SRP’s fiber network covers almost the entire Phoenix MSA, providing a significant wholesale option for other carriers.¹¹⁹

There is no question that SRP provides a very viable option for carriers that seek an alternative access solution to the use of Qwest’s network in the Phoenix MSA. SRP is actively marketing services to these carriers, and can provide comprehensive “last mile” solutions to

¹¹⁹ *Id.* ¶ 53.

connect commercial buildings, POPs, switches, collocations and other carrier locations throughout the Phoenix area -- all without the use of Qwest facilities.¹²⁰

AGL Networks (“AGL”) owns and operates a 225 mile fiber network in the Phoenix MSA, which is designed to offer last-mile connectivity between communications providers and business locations. AGL’s 225-mile Phoenix network, which is depicted in the map included as Exhibit 10 to the Brigham Declaration, covers the central business district, midtown, I-17 corridor, airport, South Tempe and Chandler areas.¹²¹ AGL’s on-net building list for Phoenix, included as Exhibit 11 to the Brigham Declaration, names 64 specific in-service or pending building locations in the Phoenix area.¹²²

Integra via its acquisition of Electric Lightwave (“ELI”) has a large presence -- with its own fiber network -- in the Phoenix MSA, this acquisition allowed Integra to become a major player in the Phoenix market, for both retail and wholesale services.¹²³ The ELI division of Integra *focuses solely on marketing carrier services* in 23 metropolitan access networks in eight Western states¹²⁴ which includes Phoenix. While ELI does not provide a local map of its Phoenix network, its long haul network map (included as Exhibit 12 of the Brigham Declaration) shows -- in an admittedly compressed manner -- its large Phoenix fiber network. According to GeoTel, Integra/Electric Lightwave now has approximately *****Begin Confidential End Confidential***** miles of fiber in the Phoenix MSA that can be used to provide retail and wholesale services.

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 54.

¹²² *Id.*

¹²³ *Id.* ¶ 55.

¹²⁴ *Id.*

ELI offers other carriers its “Metro Private Line Access” product line that includes DS1 through OC192 private line services and Ethernet Private Line services as well.¹²⁵ Integra/ELI is a major provider of wholesale carrier services in the Phoenix MSA, and provides a clear alternative to Qwest wholesale services.

AT&T provides retail and wholesale services in the Phoenix MSA, and owns a significant amount of fiber in this market for use in providing such services. According to GeoTel, AT&T has approximately *****Begin Confidential End Confidential***** route miles of fiber within the Phoenix MSA.¹²⁶

XO offers wholesale services through its XO Communications Carrier Services division. XO’s network includes over 3,000 on-network buildings, 34 Nortel DMS-500 switches for local and long distance voice, Sonus Networks soft switches for handling next-generation VoIP traffic and approximately 1,158,000 miles of fiber. XO’s network map shows Phoenix as an XO market with a Metro IP Node, a Class 5 Voice Switch and a Sonus Gateway.¹²⁷

In addition, it is important to note that XO’s wholesale business is not limited to services provided via its extensive landline fiber facilities. XO’s broadband wireless subsidiary, Nextlink, provides wholesale telecommunications services including “last mile” connectivity. XO/Nextlink announced the launch of broadband wireless services in Phoenix in March 2007, with coverage that initially included the downtown Phoenix area, but would be expandable to the entire Phoenix metropolitan area, including Paradise Valley, Scottsdale and Tempe. Nextlink’s wholesale broadband wireless services can be offered in any Qwest wire center in the Phoenix

¹²⁵ *Id.*

¹²⁶ *Id.* ¶ 57.

¹²⁷ *Id.*

MSA that is within reach of a Nextlink broadband wireless transmitter/receiver, since such wireless services are not constrained by physical wire center boundaries.

Level 3 is a major provider of wholesale telecom services to other carriers in the Phoenix MSA. Level 3 counts among its customers “19 of the world’s top telecom companies; 9 of the top 10 U.S. Internet Service Providers (ISPs); 9 of the top 10 U.S. cable companies; and the top 5 U.S. Wireless Service Providers.”¹²⁸ The combined Level 3/Broadwing entity has significant facilities in the Phoenix MSA, with over *****Begin Confidential End Confidential***** fiber miles in Qwest’s serving territory in the Phoenix MSA. These facilities may be used to offer carrier access to customers without reliance on Qwest’s network.

tw telecom (f/k/a Time Warner Telecom¹²⁹) also provides wholesale services to other providers. For example, tw telecom has a long-term agreement in place with AT&T/SBC, which extends through 2010, that provides AT&T with special access and “last mile” connectivity to customers via tw telecom’s network. This provides AT&T with a clear alternative to Qwest Special Access services in the Phoenix MSA.¹³⁰ tw telecom offers other carriers a clear alternative to Qwest facilities for reaching end-user business customers and now owns over *****Begin Confidential End Confidential***** miles of fiber in Qwest’s wire centers in the Phoenix MSA.¹³¹

¹²⁸ *Id.* ¶ 59.

¹²⁹ Time Warner Telecom operated under a name licensing agreement with its former parent company, Time Warner, Inc. That agreement expired on June 30, 2008, and effective July 1, 2008 Time Warner Telecom became tw telecom. (*See* <http://www.twtelecom.com/Documents/Announcements/News/2008/newname.pdf>.)

¹³⁰ *Id.* ¶ 60.

¹³¹ *Id.*

AboveNet provides fiber solutions to businesses and carriers in the Phoenix market.¹³² On its website, AboveNet provides a map of its extensive Phoenix fiber network, which is included as Exhibit 13 of the Brigham Declaration.

360networks owns a 17,200 route mile broadband fiber optic network in the U.S., with 10,400 miles of that total in the 15 western U.S. states (including Arizona).¹³³ In mid-2007, 360networks significantly expanded its presence in Arizona as a provider of wholesale telecommunications services.¹³⁴ While 360networks does not publicly divulge the specific Qwest Arizona rate centers in which its wholesale services are now offered, since the Phoenix MSA contains a disproportionate share of the state's population, 360networks' assertion that its services are now available to 90% of the Arizona population clearly means that its wholesale services are available in the Phoenix MSA.

As described in the preceding paragraphs, and in the Brigham Declaration, there are numerous wholesale providers serving carriers in the Phoenix MSA. Most of these providers own their own fiber networks, and as demonstrated above, the overall fiber coverage of the Phoenix MSA is extensive. Many buildings are already connected to these fiber networks, and many other buildings are in close proximity and could be easily connected -- providing last mile connectivity to buildings where customers are located. CLEC parties that oppose Qwest's Petition are likely to argue that it is difficult to build "lateral" facilities from a fiber ring into a building, and that they are dependent on Qwest facilities for "last mile" connectivity. However, this is simply not the case, as confirmed by the fact that CLECs often advise the investment community how their fiber networks can be easily connected to the buildings where customers

¹³² *Id.* ¶ 61.

¹³³ *Id.* ¶ 62.

¹³⁴ *Id.*

are located. In a September 17, 2007 call with Investment Analysts regarding the merger of McLeod and PAETEC Holdings Corp., Royce Holland, CEO of McLeod stated:

One thing we haven't done is put lot of that fiber in office buildings, because our business [has] been the small and medium enterprise business. That doesn't mean we couldn't light a lot of buildings throughout the Midwest. That's one of the potential upside advantages of getting together with Paetec. ***Our fiber can be useful for that. It's easy enough to get into a manhole and get the fiber into a building.***¹³⁵

In the Phoenix MSA, there are numerous options for carriers to purchase "last mile" wholesale services that allow them to bypass Qwest's network entirely.

D. Residential Appendix B Market Share Calculation

In the *Verizon 6 MSA Forbearance Order*, the Commission defined a market share calculation methodology that it used to determine the level of competition in the MSAs for which Verizon sought forbearance.¹³⁶ The Commission adopted a similar market share calculation methodology in Appendix B of its *Order* in WC Docket No. 07-97.¹³⁷ Since the Commission indicated that this methodology should be used to calculate market shares in future forbearance proceedings, Confidential Exhibit 14 of the Brigham Declaration provides Qwest's estimate of the share of the residential market in the Phoenix MSA using the methodology defined by the Commission in Appendix B of the *Qwest 4 MSA Order*. As delineated in this

¹³⁵ PAETEC Acquires McLeodUSA, Telephony Online, September 17, 2007; See: http://telephonyonline.com/access/news/paetec_acquires_mcleodusa_091707/. Also see McLeod/PAETEC Financial Analyst Call, September 17, 2007; <http://www.secinfo.com/d14D5a.u66q2.htm>.

¹³⁶ *Verizon 6 MSA Order*, 22 FCC Rcd at 21323, Appendix B.

¹³⁷ *Qwest 4 MSA Order*, 23 FCC Rcd at 11763-64, Appendix B. The Commission stated: "The formulas used to calculate market shares for purposes of this order are set forth in Appendix B." See *id.* at 11740 ¶ 17 n.64.

Exhibit, the “Appendix B” calculation estimates that Qwest’s residential market share in the Phoenix MSA is *****Begin Confidential End Confidential*****.

In the Commission’s order in WC Docket No. 07-97, in which it denied Qwest’s request for forbearance in four MSAs, the Commission further clarified its position with respect to the use of wireless substitution in a proper analysis of telecommunications competition:

In calculating market shares, we believe it is appropriate to include wireless-only households (*i.e.*, residential telephone customers who have “cut the cord”). In particular, we find that mobile wireless service should be included in the local services product market to the extent that it is used as a complete substitute for all of a consumer’s voice communications needs. Over the past several years, as wireless substitution rates have continued to rise, the Commission has begun including such intermodal substitution in its competitive analyses of the local services market.¹³⁸

Consistent with this determination, the calculation methodology developed by the Commission in Appendix B of the *Qwest 4 MSA Order* includes an input that represents “The percentage of wireless-only households expressed in decimal notation.”¹³⁹

In WC Docket No. 07-97, Qwest provided a market share analysis containing a “wireless only” percentage derived from a study of national wireless-only household data published by the Center for Disease Control (“CDC”), since the Commission had utilized that data source in the *Verizon 6 MSA Order*. Qwest also provided “wireless only” household data from Nielsen Mobile that was specific to the Phoenix MSA.¹⁴⁰ However, in the *Qwest 4 MSA Order*, the Commission rejected these data. First, the Commission rejected the CDC wireless substitution data because it provided only national and regional data, rather than MSA-specific data, and thus did not provide the necessary level of geographical granularity. The Commission stated:

¹³⁸ *Id.* at 11742 ¶ 19.

¹³⁹ *Id.*, at 11763-64, Appendix B.

¹⁴⁰ Nielsen Mobile purchased the consumer research firm Telephia.

. . . . with respect to the CDC data, we believe it is most consistent with our geographically-specific analysis in the *Qwest Omaha* line of precedent to rely on a similarly geographically-specific measure of wireless substitution. In the present context, Qwest seeks regulatory relief for particular MSAs based on the specific competitive conditions in those markets, but the CDC estimates and the record generally do not contain reliable data of this type.¹⁴¹ (Footnotes omitted.)

Second, the Commission rejected the Nielsen (Telephia) data because it did not believe that the level of documentation was sufficient:

[T]he only substantive information in the record regarding the Telephia survey is a news release that does not describe Telephia's methodology or provide any other information to support the significance of the data.¹⁴²

While rejecting the specific data, the Commission reiterated in the *Qwest 4 MSA Order* that its Appendix B *methodology* was appropriate, and invited Qwest to refile its Petition with reliable Phoenix MSA-specific wireless substitution data. The Commission stated:

For these reasons, Qwest has not sufficiently supported its case for forbearance on the basis of reliable, geographically-specific data regarding the measure of wireless substitution in the four MSAs. We understand the importance of our decision to insist upon reliable data and recognize that Qwest might have qualified for some forbearance upon a better evidentiary showing. Qwest may, of course, refile its petitions and our decision in this instance does not prejudice the outcome in any future proceeding. We emphasize that petitioners relying on mobile wireless substitution to support forbearance relief should submit complete and reliable data that is geographically specific to the areas for which forbearance is sought.¹⁴³ (Footnotes omitted.)

To satisfy the wireless substitution data requirements outlined by the Commission, Qwest commissioned an outside consulting firm, Market Strategies, Inc., to conduct a statistically valid study of wireless substitution in the Phoenix MSA. The study results and documentation are provided as Exhibit 5 of the Brigham Declaration. In conducting its study, Market Strategies

¹⁴¹ *Qwest 4 MSA Order*, 23 FCC Rcd at 11743-44 ¶ 21.

¹⁴² *Id.*

¹⁴³ *Id.* at 11744 ¶ 22.

interviewed a statistically significant number of households in the Phoenix MSA, and the resulting wireless substitution percentages are within the desired +/- 5% confidence interval. As was noted earlier, the study found that 25% of Phoenix MSA households have “cut the cord” and rely solely on wireless service to meet their telecommunications needs. Qwest utilized the 25% result in the “Appendix B” calculations in Confidential Exhibit 14 of the Brigham Declaration.

The “Appendix B” methodology includes a measurement of “Qwest residential resold lines” and “Qwest residential platform service lines (QPP + QLSP lines).”¹⁴⁴ Qwest utilized its internal wholesale billing records for December 31, 2008, as presented in Highly Confidential Exhibit 7 of the Brigham Declaration, to determine the number of Qwest residential resold lines and QPP/QLSP lines.

The “Appendix B” methodology also includes an input for CLEC “facilities-based residential access lines.”¹⁴⁵ In the *Qwest 4 MSA Order*, the Commission used the actual number of Cox Communications residential phone lines as provided by Cox for this input. However, in the *Qwest 4 MSA Order*, the Commission also found that “Qwest’s white page listings data, although providing an inexact estimate, are a reasonable proxy for the number of total residential access lines in service.”¹⁴⁶ Since Qwest does not have access to Cox’s confidential access line data, the “Appendix B” calculation in Confidential Exhibit 14 of the Brigham Declaration estimates CLEC facilities-based access lines using these directory listings data. Consistent with the Commission’s guidance in the *Qwest 4 MSA Order*,¹⁴⁷ Qwest has made no adjustments to the residential listings data as it did in previous submissions. Instead, it is assumed the number of

¹⁴⁴ *Id.* at 11763-64, Appendix B.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 11741-42 ¶ 18.

¹⁴⁷ *Id.* at 11741-42 ¶ 18, n.68.