

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Petitions of Qwest Corporation)	
for Forbearance Pursuant to 47 U.S.C. § 160(c))	WC Docket No. 09-135
in the Phoenix, Arizona Metropolitan Statistical Area)	
)	

**COMMENTS OF
THE ADHOC TELECOMMUNICATIONS USERS COMMITTEE**

The AdHoc Telecommunications Users Committee (“AdHoc” or “the Committee”) submits these Comments pursuant to the Commission’s Public Notices¹ in the docket captioned above.

Ad Hoc has reviewed the petition and, through its economic consultants, has reviewed the data upon which Qwest relies to support its claims that the markets for which it seeks forbearance are sufficiently competitive to satisfy

¹ See *Pleading Cycle Established for Comments on Qwest Corporation’s Petition For Forbearance in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Public Notice, DA 09-1653 (rel. July 29, 2009); *Wireline competition Bureau Extends Comment Due Dates on Qwest Corporation’s Petition for Forbearance in the Phoenix, Arizona Metropolitan Statistical Area*, Public Notice, Docket No. 09-135, DA 09-1836 (rel. August 20, 2009).

Section 10 of the Act. As described in greater detail below, the petition is ambiguous at some points regarding the particular services for which it seeks forbearance. In addition, the petition is supported by flawed and incomplete evidence of competition. Accordingly, the Commission should deny the petition. If the Commission chooses to grant all or part of the petition, it must eliminate any ambiguity regarding the scope of that forbearance. It must clarify, as it has done in prior orders seeking similar forbearance (including the very orders on which Qwest relies) that the forbearance requested by Qwest does not extend to special access service or enterprise switched services.

DISCUSSION

The members of Ad Hoc are corporations that are heavy users of telecommunications services. Carriers typically refer to them as “enterprise customers.” Enterprise customers purchase enterprise switched services. In addition, they depend on special access services because the Commission’s special access category includes the broadband and specialized data services that are the building blocks of enterprise customer networks. Because Ad Hoc members rarely have competitive choices for the “final mile” segments of their networks that special access and enterprise switched access provide, they oppose Qwest’s petition to the extent that it may seek forbearance for those services.

Initially, the petition appears to be clear enough with respect to enterprise switched and special access services: they are excluded from the relief Qwest is requesting. Qwest says as much at several points in the petition. Qwest

identifies the services that *are* within the scope of its petition and refers only to “mass market and enterprise services.”² More importantly, Qwest states that it is seeking “substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*” and relief that is “identical to that requested by Verizon in its six MSA petitions,”³ except that Qwest wants forbearance from fewer rules.⁴ Qwest also cites the *Omaha Order* elsewhere in its petition as the model for the relief it is seeking.⁵ In both of those Orders, the Commission explicitly refused to grant forbearance with respect to enterprise switched access services and special access services.⁶ If Qwest is seeking “identical” relief here, it is not entitled to relief as to those services.

But Qwest introduces some ambiguity regarding the scope of its petition when it discusses at length the “wholesale services” allegedly offered by competing carriers that it claims are a substitute for special access and are used to connect commercial buildings directly to a carrier PoP.⁷ In addition, the petition states that “Qwest seeks relief from dominant carrier tariff requirements

² Qwest Petition at 8, 10.

³ Qwest Petition at p. 7, *citing Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005), *aff'd*, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007) (“*Omaha Order*”), and the forbearance petitions resolved in *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 (2007) (“*Verizon 6 MSA Order*”), *remanded*, *Verizon Tel. Cos. V. FCC*, No. 08-1012, slip op. (D.C. Cir. June 19, 2009) (“*Verizon 6 MSA Remand*”).

⁴ *Id.* “The relief sought by Qwest in this petition is identical to that requested by Verizon in its six MSA petitions, except that Qwest does not request forbearance from rule sections 63.60-63.66.” (Citations omitted.)

⁵ Qwest Petition at 10, 12.

⁶ *Omaha Order* at n.66 and para. 50; *Verizon 6 MSA Order* at paras. 17 and 18.

⁷ Qwest Petition at 33-39.

(47 C.F.R. Part 61).”⁸ That section includes rules for special access services. For example, 47 C.F.R. Part 61.42. (e)(3) specifies the particular special access services Qwest must include in the price caps basket for special access. Yet Qwest’s petition makes no exception for this section nor for any of the other sections that apply to both switched, common line, and special access services.

Moreover, in the *Verizon 6 MSA Order* the Commission found that “Verizon in its petitions does not request forbearance from dominant carrier regulation of special access services *or enterprise switched access services*.”⁹ Yet, despite Qwest’s request for relief “identical” to that requested by Verizon in that petition, the specific rules for which Qwest seeks forbearance apply to the enterprise switched access services that the Commission has already found were not a part of Verizon’s request.

Therefore, if the Commission chooses to grant all or part of the petition, it must eliminate any ambiguity regarding the scope of that forbearance and clarify that the forbearance requested by Qwest does not include special access service or enterprise switched access services.

As to the services that fall within the scope of the petition, Qwest’s proffered “evidence” of competition is scant and demonstrates that Qwest faces little competition in the Phoenix market.

For example, Qwest presents a “confidential” tabulation of the response to a single question in a Harte-Hankes survey of business customers in the Phoenix

⁸ Qwest Petition at 7.

⁹ Verizon 6 MSA Order at para 18 (emphasis added).

MSA.¹⁰ Qwest's data purports to identify the percentage of business customers in Phoenix who rely upon Qwest as their "primary" provider. The data Qwest presents has three fundamental problems. First, Qwest has not provided the text of the question. As a result, there is no way of knowing how or even if, the questioners defined the term "primary" carrier. Second, Qwest does not identify the personnel who answered the question and whether they were in a position to know the local service provider for that location. Third, in most enterprises – particularly large enterprises – the switched local access lines that Qwest is asking to have deregulated would make up only a small portion of overall telecom expenses. Expenses could include interstate long distance, international service, data services, wireless, internet access and hosting, and more costly telephone equipment such as PBXs and multiple handsets. The response to a question regarding whether Qwest is the "primary" carrier is relevant only to the extent that it was limited specifically to the provision of switched access lines (local exchange dial tone lines) and there is no evidence that it was.

Qwest also claims to have a high level of competition from Cox and other competitors in the Phoenix MSA. But Qwest provides no comprehensive metrics for Phoenix and is highly selective regarding the data that it does provide. For example, Qwest reports that an unsubstantiated number of buildings are connected by competitor fiber in Phoenix but does not provide the total number

¹⁰ Declaration of Robert H. Bingham, Attachment to Qwest Petition ("Bingham") at 21–22. Although Qwest claims the Harte-Hankes survey involved "extensive interviews," that claim cannot be tested since none of the other data gathered as part of the interviews is included in Qwest's filing.

of buildings.¹¹ Qwest reports the number of buildings with over \$1000 in monthly telecom usage that are also located within 1000 feet of CLEC fiber but doesn't report how many \$1000 buildings there are *in toto* in the MSA. Since most CLEC fiber runs in the downtown area, the total number of \$1000 buildings in the entire MSA is likely many multiples – perhaps 10, perhaps 100 times – of the “confidential” number reported by Qwest for only those buildings that are within 1000 feet of CLEC fiber. Without that number, the confidential data regarding \$1000 buildings within 1000 feet of CLEC fiber is not probative. Qwest takes the opposite tack when it reports on potential competition for buildings with a higher level of monthly expenditure. In that case, Qwest reports the percentage of such buildings with competitive fiber but not the number of buildings,¹² without which the percentage is not probative.

The fact that there is a series of unrelated – and for that matter unsubstantiated – data¹³ in Qwest's pleading which Qwest has classified as “confidential” should not distract the reader from the fact that Qwest provides no evidence of the total number of buildings connected (or even those that fall within its arbitrary standard of 1000 feet from CLEC fiber).

¹¹ The Commission can nevertheless use the limited data that Qwest does provide - even without the total number of buildings in the Phoenix MSA – to determine whether there is a lack of competitive alternatives. The Commission can, for example, compare the number of buildings connected to competitive fiber reported at para. 38 of the Bingham Declaration to the number of buildings with over \$1000 in monthly telecom usage and within 1000 feet of CLEC fiber, also reported at para. 38, to calculate an “upper limit” percentage of business locations with competitive alternatives.

¹² Bingham at 27.

¹³ Qwest documents this “confidential” data with nothing more than “Source: GeoTel, August 2008.” Bingham at n. 78. Since the “GeoTel” data has not been filed as part of the record and is not publicly available, Qwest could have cited “the man in the moon” and the data would be no more well supported than it is today.

The remainder of Qwest's data is a recitation of "fiber-miles" associated with various competitors, quotes from marketing blurbs, reports of nationwide data, and a perplexing reference to VoIP services as if those services can provide alternatives to Qwest's access lines¹⁴ – none of which meets the burden of demonstrating that the FCC should forbear from regulating Qwest's' business access services.

Most importantly, there is nothing in Qwest's filings that refutes the data presented by the Government Accountability Office in its November, 2006 report.¹⁵ As part of its investigation of conditions in the special access market, the GAO researched and analyzed the number of "lit" buildings in the Phoenix MSA (among others). At that time, GAO found that of the 7,981 commercial buildings with a demand for service at the DS1 or higher level in the Phoenix metro area only 297 (3.7%) were connected to competitor fiber.¹⁶ In other words, business customers at 96% of commercial locations with at least a DS-1 level of demand have no choice in Phoenix but to obtain service over facilities provisioned by Qwest.

CONCLUSION

For the reasons discussed above, the Commission should deny the

¹⁴ VoIP is an application that runs over an access line. An access line of some kind is still required for service.

¹⁵ U.S. Government Accountability Office, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report to the Chairman, Committee on Government Reform, House of Representatives, GAO-07-08, November 2006 (GAO Report)

¹⁶ GAO report Table 2, page 20. It should be noted that the 7,981 buildings with high capacity demand represents only a portion of the total number of commercial buildings in the Phoenix MSA - leaving out of the count those buildings with lower levels of demand (those even less likely to be connected via competitor-owned facilities).

petition for forbearance filed by Qwest in this docket. If the Commission grants the petition in whole or in part, it should clarify that Qwest did not request, and thus did not receive, forbearance from regulation for its special access services.

Respectfully submitted,

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Certificate of Service

I, Dorothy Nederman, hereby certify that true and correct copies of the preceding Comments of AdHoc Telecommunications Users Committee was served this 31st day of August, 2007 via the FCC's ECFS system, and via email upon the following:

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A handwritten signature in black ink, reading "Dorothy Nederman", written over a horizontal line.

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