

repair facilities. Moreover, there are unacceptable constraints for a telecommunications carrier regarding when this work can be done. Electric power must be shut down to access and work on the SRP telecommunications facilities, which means that SRP must first reroute power from the affected locations to avoid black-outs when servicing a wholesale telecommunications carrier customer. In addition, a carrier must rely completely on SRP Telecom for access to the facilities given their locations on the SRP infrastructure. Consequently, a telecommunications carrier cannot easily install drops to customer or building locations (leaving aside the other difficulties and significant costs in constructing laterals) or other carrier network locations from the SRP facilities, which minimizes the utility of the SRP network as a wholesale alternative for carriers in Phoenix. Further, the Commenters understand that SRP offers no Quality of Service (“QOS”) guarantees for its telecommunications services or facilities, and no Service Level Agreements. Thus, in the final analysis, for the technical, operational, and economic reasons explained here, SRP is an unsuitable – if not impossible – alternative for carriers serving the business market today.

AGL Networks (“AGL”) is another supplier of wholesale inputs on which Qwest heavily relies in its petition as a source of competitive alternatives to unbundled loops.¹⁴⁰ XO has plans to use AGL on a limited basis, *****BEGIN HIGHLY CONFIDENTIAL *****

*****END**

HIGHLY CONFIDENTIAL***¹⁴¹ While AGL provides “last mile” connectivity to approximately 75 buildings in the Phoenix MSA, AGL’s network is of limited utility as a source

¹⁴⁰ *Second Phoenix Petition*, at 35.

¹⁴¹ Highly Confidential Declaration of Bryan Burns, Network Manager, XO Communications, LLC, Sept. 21, 2009 (“*Burns Declaration*”), appended hereto as Appendix A, at ¶ 7, 8.

of competitive alternatives to serve business customers in Phoenix.¹⁴² First, AGL only leases dark fiber, requiring any customer to purchase and deploy all electronics to support the transmission of communications.¹⁴³ Second, the AGL network, for the most part, follows similar routes to a number of other facilities-based carriers. Third, AGL's network and pricing is primarily useful to serve extremely large data throughput needs, typically several GB to 10GB, rather than users needing much smaller T-1 or DS-3 capacity which make up a large segment of the business market.¹⁴⁴ Finally, in XO's experience, a carrier leasing from AGL is limited to using AGL laterals and cannot tie AGL facilities into their own network except at specified POPs, which further limits AGL as a viable wholesale alternative.¹⁴⁵ For the foregoing reasons, AGL's network is of very limited utility to CLECs serving business customers in the Phoenix MSA.

Qwest overstates by implication XO's presence as a wholesale alternative to competitive carriers. Qwest rattles off some general data regarding XO's networks nationally and, regarding the MSA at issue in the instant petition, simply notes that "XO's network map shows Phoenix as an XO market with a Metro IP Node, a Class 5 Voice Switch, and a Sonus Gateway."¹⁴⁶ While these basic facts regarding XO's presence in Phoenix are correct, XO today has limited ability to provide wholesale alternatives. As an initial matter, XO has its own facilities connected only to *****BEGIN HIGHLY CONFIDENTIAL ***** *****END** **HIGHLY CONFIDENTIAL***** commercial buildings in the Phoenix MSA, only *****BEGIN**

¹⁴² *Id.*, at ¶¶ 4, 9.

¹⁴³ *Id.*, at ¶ 6.

¹⁴⁴ *Id.*, at ¶ 9. AGL's retail customers are typically large institutions with corresponding need for higher bandwidth services. *Id.*, at ¶ 5.

¹⁴⁵ *Id.*, at ¶ 4.

¹⁴⁶ *Second Phoenix Petition*, at 36.

HIGHLY CONFIDENTIAL ***

***END HIGHLY

CONFIDENTIAL*** of all commercial buildings in the market. Adding additional buildings is a costly venture which XO undertakes only after developing a strong business case and a demonstrated capacity need of at least 3 DS-3s.¹⁴⁷ Indeed, only ***BEGIN HIGHLY CONFIDENTIAL *** ***END HIGHLY CONFIDENTIAL*** new commercial buildings have been added by XO in the Phoenix MSA in the past sixteen months.

Further, leaving aside the business case which must be demonstrated before XO would build new laterals, XO's potential physical reach is quite limited in terms of additional commercial buildings within 500 and 1000 feet of XO's backbone network. As shown in XO's highly confidential *ex parte* filing of May 20, 2008 in the *Qwest 4 MSA* proceeding, less than ***BEGIN HIGHLY CONFIDENTIAL *** ***END HIGHLY

CONFIDENTIAL*** of commercial buildings in the Phoenix MSA are within 500 feet of XO's backbone network and less than ***BEGIN HIGHLY CONFIDENTIAL ***

END HIGHLY CONFIDENTIAL of commercial buildings are within 1000 feet of its network.¹⁴⁸ Therefore, even if it were the case that XO could reach *all* of the buildings within 1000 feet of XO's backbone network within a commercially reasonable period of time, which would represent an almost ***BEGIN HIGHLY CONFIDENTIAL ***

END HIGHLY CONFIDENTIAL increase in the number of buildings it currently serves, XO would still only reach less than ***BEGIN HIGHLY CONFIDENTIAL *** ***END HIGHLY CONFIDENTIAL*** of commercial

¹⁴⁷ *Govil Declaration, supra*, ¶ 19.

¹⁴⁸ See Letter from Genevieve Morelli, Counsel for XO Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-97 (filed May 20, 2008) ("*XO May 20th Ex Parte*"), at 2.

buildings within the Phoenix MSA.¹⁴⁹ Therefore, although XO does offer features, functions, and facilities on its network to other carriers as a wholesaler, its actual and potential reach is extremely limited and essentially insignificant in terms of supporting a grant forbearance from UNE obligations in response to the Qwest petition.¹⁵⁰

Finally, the Commenters wish to make a few observations regarding Nextlink as a source of competitive alternatives. Nextlink is, as Qwest notes, an XO subsidiary offering wireless broadband services.¹⁵¹ Although Nextlink announced two years ago its intentions to provide last-mile connectivity within the downtown Phoenix area, as Qwest notes, in reality Nextlink's progress has been measured. As of today, Nextlink has only *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** hubs in the Phoenix MSA, one of which is subject to *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY**

CONFIDENTIAL*** Nextlink today serves business customers in only *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** buildings (not counting a connection to an XO local switching office, which is needed to support Nextlink's services to *****BEGIN HIGHLY CONFIDENTIAL***** *****END HIGHLY CONFIDENTIAL***** of the customer sites) within the Phoenix MSA. As such, Nextlink is not a significant source of competition for Qwest for last-mile connectivity on either a retail or a wholesale basis.

¹⁴⁹ As explained in the *May 20th Ex Parte*, whether or not XO could build laterals to these buildings depends greatly on each building's demand, as well as other factors such as building access and specific loop plant build characteristics. *Id.*, at 3.

¹⁵⁰ The *XO May 20th Ex Parte* is currently being updated and the results will be filed when they are available.

¹⁵¹ *Second Phoenix Petition*, at 36-37.

In addition, as explained in the attached Declaration of Mr. Michael Lasky of Widelity, Inc., broadband wireless provided by Nextlink, using its Local Multipoint Distribution Service (“LMDS”) licenses, has limited potential for providing a wholesale alternative material to any market power analysis despite Qwest’s claims that wireless broadband from Nextlink can be offered ubiquitously in any wire center.¹⁵² As an initial matter, LMDS is a line-of-sight technology with limited usefulness where physical features such as buildings, trees, or hills block the potential signal path.¹⁵³ Indeed, *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL***** sites served today by Nextlink in the Phoenix MSA require the use of repeater sites to overcome lack of line-of-sight, a factor which greatly increases the cost and potential delay in serving customers.

In addition, LMDS equipment is expensive to deploy to a building, both in terms of wireless hubs and customer locations, and can be time consuming.¹⁵⁴ Not only must rooftop rights obtained from the property owner, but the rights to wire the building to the intended customer must also be obtained and the work implemented,¹⁵⁵ all factors which can adversely affect the timely delivery of service to customers, retail or wholesale, when compared with wireline alternatives.¹⁵⁶ Volumes of service in this band is relatively low, preventing manufacturers from “ramping up” production in a manner that allows them to pass along volume

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Id.

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Declaration of Michael Lasky, Principal, Widelity, Inc., Sept. 21, 2009, (“*Lasky Declaration*”), appended hereto as Appendix B, at ¶ 5.

154

Id., at ¶ 6.

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Id., at ¶ 10. LMDS is a rooftop-to-rooftop deployment. In some instances, buildings are designed with tenant connectivity from the basement up to the tenant floor. Revising the deployment scheme to facilitate roof-down connectivity can often involve significant construction and customer disruption. *Id.*

156

Zoning requirements and landlords often limit the number and size of antennas that can be installed on a roof, making the total number of customers served from a hub a finite amount. *Id.*, at ¶ 9.

pricing.¹⁵⁷ When built into the customer pricing model, circuit costs reflect these higher deployment costs, making a price-competitive offering difficult to provide, especially for DS0 and DS1 circuits.¹⁵⁸ As a result, as detailed by Mr. Lasky in his Declaration, the 28 GHz links used to deliver LMDS services (both point-to-point and point-to-multipoint) are not a general substitute for copper loop circuits.¹⁵⁹

E. Competition From Mobile Wireless Services

Qwest does not contend that, in the business market, competition from mobile wireless services supports its request for forbearance from UNE unbundling obligations. Qwest is correct in this omission since in the current marketplace, mobile wireless services are not a reliable, standardized substitute for wireline services in supporting business customers. Therefore, further discussion regarding mobile wireless competition in the enterprise market is not necessary.

F. Qwest's Line Loss Data Does Not Support Its Request For Forbearance From Section 251(c)(3) Unbundling Requirements

Data showing declines in Qwest's business lines provide no evidence of the actual facilities-based competition that is a prerequisite to Section 251(c)(3) forbearance. In support of its petition, Qwest cites decreases in its retail access lines, both business and residential, contending that these line losses show that various competitive alternatives are widely used in the MSA.¹⁶⁰ These figures show nothing regarding the state of the all-important *facilities-based* competition in these MSAs. As the Commission correctly noted on other occasions, line loss by an ILEC "does not necessarily indicate capture of that customer by a competitor, but may

¹⁵⁷ *Id.*, at ¶ 6.

¹⁵⁸ *Id.*, at ¶¶ 4, 11.

¹⁵⁹ *Id.*, at ¶ 4.

¹⁶⁰ *Second Phoenix Petition*, at 5-6.

indicate that the consumer converted a second line used for dial-up Internet access to an incumbent LEC broadband line for Internet access.”¹⁶¹ As the Commission added in the *Qwest 4-MSA Order*, “[t]here are many possible reasons for such decreases [in Qwest’s retail lines served] unrelated to the existence of last-mile facilities-based competition.”¹⁶² Line losses may indicate that the consumers have abandoned their wireline voice service in favor of a non facilities-based offering or for a private network that does not involve the purchase of telecommunications services. Before Qwest can argue that line loss data should be included in the Commission’s forbearance analysis, it must show that decreases in its line counts are not attributable to consumers moving from one Qwest product to another Qwest service offering but result from customers migrating to facilities-based last-mile competitors. Qwest has offered no such evidence here – only tired arguments rejected by the Commission in prior forbearance orders.

VI. A GRANT OF FORBEARANCE WOULD NOT BE IN THE PUBLIC INTEREST

Beyond Qwest’s failure to demonstrate that ongoing Section 251(c)(3) unbundling regulations are not necessary to ensure that its charges and practices are just and reasonable and likewise are unnecessary for the protection of consumers, as discussed above, it is clear that the Qwest petition is not consistent with the public interest, and therefore does not satisfy the third prong of the Section 10(a) test. There are several reasons compelling the conclusion that the grant of forbearance to Qwest in the Phoenix MSA would run counter to the public interest. And it is not an exaggeration to suggest that granting forbearance would have

¹⁶¹ *Anchorage Forbearance Order*, at n. 88.

¹⁶² *Qwest 4-MSA Order*, at ¶ 30.

significant deleterious public interest impacts that would extend far beyond the MSA under consideration here.

A. Competition Would Be Diminished If Forbearance Is Granted

In the *Omaha Forbearance Order*, the Commission analyzed the third prong of the Section 10(a) test (*i.e.*, whether forbearance from the unbundling obligations of section 251(c)(3) would be in the public interest) largely on the basis of the actual competition which existed within the wire centers of the Omaha MSA. The Commission noted that the factors upon which it based its conclusions regarding satisfaction of the first two prongs of the Section 10(a) standard “also convince us that granting Qwest forbearance from the section 251(c)(3) access obligation for loop and transport elements would be consistent with the public interest under section 10(a)(3).”¹⁶³ The principal factor guiding the Commission in the Omaha case, of course, was evidence of sufficient facilities-based competition in the particular wire centers in which forbearance was granted. Likewise, in the *Anchorage Forbearance Order*, the Commission based its grant of forbearance on the fact that “ACS is subject to a significant amount of competition in the Anchorage study area.”¹⁶⁴

As discussed above, Qwest has not demonstrated sufficient facilities-based retail or wholesale competition in the subject MSA. Accordingly, not only has Qwest failed to meet the first two prongs of the Section 10(a) standard, it has failed to satisfy the public interest standard under Section 10(a)(3).

¹⁶³ *Omaha Forbearance Order*, at ¶ 75.

¹⁶⁴ *Anchorage Forbearance Order*, at ¶ 49.

In the *Omaha Forbearance Order*, the Commission also found that the costs of continued Section 251(c)(3) unbundling outweighed the benefits;¹⁶⁵ something which Qwest claims is true in the Phoenix MSA.¹⁶⁶ The Commission concluded that the “costs [of unbundling] are unwarranted and do not serve the public interest once local exchange and access markets are sufficiently competitive, as is the case in certain limited areas of the Omaha MSA.”¹⁶⁷ Here, because Qwest has failed to demonstrate sufficient competition in the Phoenix MSA, the Commission has no basis to conclude, even “in certain limited areas of the [subject] MSA,” that the costs of unbundling outweigh the benefits.

More particularly, Qwest offers no evidence in its petition that the regulations at issue are hindering its ability to compete. Rather, despite the costs of unbundling, competition and consumer interests will continue to benefit from unbundling throughout the Phoenix MSA.¹⁶⁸ Indeed, the evidence is compelling that competitive conditions in these MSAs are such that continued unbundling is required because market forces alone cannot be relied upon to sustain competition.

Qwest relies in part on the competition provided by “traditional CLECs” to support its requested relief in the business market.¹⁶⁹ Yet these competitors in the Qwest

¹⁶⁵ *Omaha Forbearance Order*, at ¶¶ 76-77.

¹⁶⁶ *See Second Qwest Petition*, at 43.

¹⁶⁷ *Omaha Forbearance Order*, at ¶ 77.

¹⁶⁸ Qwest claims that the unbundling requirements in the subject MSA are “excessive.” *See, Second Qwest Petition*, at 43-44. Because Qwest has failed to meet its burden to demonstrate sufficient competition, it has no foundation for this assertion. As a result of this failure, any assertion that its unbundling obligations are “excessive” reduces to the untenable assertion that *any* of its unbundling obligations are excessive, a conclusion which is totally at odds “with Congress’s clear intent in section 10 to sunset *in a narrowly tailored fashion* any regulatory requirements that are no longer necessary in the public interest so long as consumer interests and competition are protected.” *See Omaha Forbearance Order*, at ¶ 40 (emphasis supplied).

¹⁶⁹ *Second Qwest Petition*, at 28-31.

incumbent local operating territory – including the Commenters – continue to rely overwhelmingly on Qwest-provided unbundled loop and transport UNEs to serve their customers. If the current regulatory obligation on Qwest to make these wholesale inputs available to competitors on cost-based (*i.e.*, TELRIC) rates and terms were to disappear through forbearance, it is difficult to see how consumers and competition would benefit. Indeed, the result would quite likely be the opposite; wholesale rates for loops and transport would rise, driving some competitors out of the market entirely and forcing the remaining carriers to raise rates and limit service options.

Qwest also contends that “eliminating unbundling regulation will ‘further the public interest by increasing regulatory parity’ between telecommunications providers in the Phoenix MSA.”¹⁷⁰ Qwest argues that because it is losing customers to intermodal wireless and broadband competitors, it would be in the public interest to end allegedly unequal regulation between the different technological modes of delivery.¹⁷¹ In the *Omaha Forbearance Order*, however, the Commission made clear that the impetus to create technological parity is warranted only “[o]nce the benefits of competition have been sufficiently realized and competitive carriers have constructed their own last-mile facilities and their own transport facilities.”¹⁷² As shown herein, there is not yet sufficient actual facilities-based competition from other service providers in the Phoenix MSA. Steps taken to establish technological parity cannot precede the emergence of sufficient competition but, instead, must effectively derive from it. Given the state of the market in the MSA at issue and Qwest’s failure to meet its burden of proof, establishing

¹⁷⁰ See *Second Phoenix Petition*, at 44 (quoting *Omaha Forbearance Order*, ¶ 78).

¹⁷¹ *Id.* As noted above, Qwest does not cite any specific competition in the business market from commercial mobile service providers.

¹⁷² *Omaha Forbearance Order*, at ¶ 78.

technological parity at this time in the Phoenix MSA would be unwarranted, premature, and certainly *not* in the public interest.¹⁷³

In making its public interest determinations, Section 10(b) requires the Commission to consider whether forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”¹⁷⁴ A finding that forbearance will promote competition could form the basis for a conclusion that forbearance is in the public interest. At the same time, however, a mere finding that forbearance would not be detrimental to the public is not enough. The Commission must not only establish that forbearance would not unduly *harm* consumers and competition, it also must find that substantial competitive *benefits* would arise from forbearance. Qwest has failed to establish such benefits would accrue to the public and, accordingly, the Commission should conclude that the Section 10 standard has not been met.

B. Consumers Would Be Harmed If forbearance Is Granted

Even if the Commission concludes that the needs of individual competitors do not present a compelling basis upon which to resolve Qwest’s petition (and the Commenters do not suggest that this is the case), Section 10(a)(3) compels the Commission to give great weight to the interests of *telecommunications consumers* in the MSA at issue. Careful consideration of the current state of competition in the Phoenix MSA leads inexorably to the conclusion that consumers would suffer significant harm should forbearance be granted.

¹⁷³ Notably, Qwest fails to make the argument, relied upon by the Commission in the *Omaha forbearance Order*, that forbearance would motivate Qwest to compete vigorously on both a retail and a wholesale basis. See *Omaha forbearance Order*, ¶¶ 79-81.

¹⁷⁴ 47 U.S.C. § 160(b).

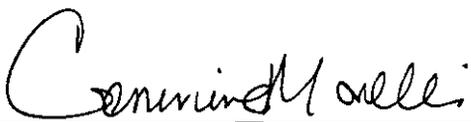
As discussed above, competitive carriers continue to rely on Qwest's loops and transport facilities to reach their customers. Continued access to Qwest's loops and transport under Section 251(c)(3) at TELRIC rates is critically important to carriers serving either the residential market or the business market in Phoenix. Unfortunately, widespread wholesale alternatives to use of Qwest's facilities and services do not presently exist, and complete self-supply generally is not practically or economically feasible. The ability to use Qwest's network at cost-based rates remains absolutely essential to ensure that consumers of competitive carriers continue to enjoy the value-added competitive services they currently enjoy today and to take advantage of the competitive innovations of tomorrow.

Because competitive carriers remain reliant on access to Qwest's loop and transport UNEs, the grant to Qwest of forbearance from UNE unbundling obligations (including TELRIC pricing) would force competitive carriers to raise prices, narrow their service offerings, and curtail the introduction of innovative broadband and other products and services. Thus, millions of consumers in the Phoenix MSA soon would be faced with less carrier and service choices and, perhaps most importantly, higher prices.

VII. CONCLUSION

For all of the foregoing reasons, Qwest's petition for forbearance from Section 251(c)(3) unbundling obligations in the Phoenix MSA should be denied.

Respectfully submitted,

By: 

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*Counsel to Broadview Networks, Inc.,
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September 21, 2009

APPENDIX A

REDACTED - FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

HIGHLY CONFIDENTIAL DECLARATION OF BRYAN BURNS

1. My name is Bryan Burns. I am the Vice President of Network Planning at XO Communications, LLC ("XO"). I have been with XO since June 1996. Over the past thirteen years, I have held positions within XO in the departments of operations, finance, engineering and architecture. In my Network Planning role at XO Communications, I have responsibility for designing the XO network in the market of Phoenix, including outside plant, transport electronics, data networking and voice networking design.

2. I have been in the telecommunications industry for 18 years. Prior to joining XO I was employed at Sunshine Cellular, in the position of network engineer, and at LEGI-SLATE, in the position of software developer..

3. I have been asked to explain the use that XO makes in the Phoenix market of the wholesale offerings of AGL Networks ("AGL") and the limitations of those offerings in connection with XO's response to the forbearance petition filed by Qwest Corporation for relief from network unbundling obligations in the Phoenix Metropolitan Statistical Area ("MSA").

4. AGL designed its network in the Phoenix MSA to offer dark fiber to other telecommunications carriers. Principally, AGL is an outside plant construction company

REDACTED - FOR PUBLIC INSPECTION

primarily selling dark fiber to large institutions and carriers and not distribution to buildings outside of those parameters to any considerable degree. Accordingly, AGL provides a minimum degree of access to end user locations, providing connections to fewer than eighty (80) buildings within the Phoenix MSA and requiring carrier customers to access its network at a limited number of POPs (points of presence). To my knowledge, AGL does not have plans to expand the number of buildings that it offers access to materially in the near term. Instead, AGL extends its fiber to new buildings to meet customer requests for a lateral.

5. AGL is not, to my knowledge, a provider of retail services, and none of the fiber it offers is lit. However, I do understand that AGL sells dark fiber to several very large institutions that have large capacity needs and can justify the investment in telecommunications infrastructure, as an alternative to buying retail services from telecommunications carriers.

6. Within a building that AGL's network reaches, a carrier customer must obtain from the building owner the right to place facilities equipment and wiring within the building to reach specific end user customer premises, and must assume the full costs of installing the wiring and other equipment within the building to serve the end user customer.

7. XO has plans to begin to make use of AGL dark fiber within the Phoenix MSA, but on a limited basis. XO will use AGL for *****BEGIN HIGHLY**

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REDACTED - FOR PUBLIC INSPECTION

8. XO will connect its own network facilities to the AGL core fiber network at *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL***** (I believe AGL has approximately 225 *route* miles within its network, including building laterals.) Under our arrangement, XO can *****BEGIN HIGHLY CONFIDENTIAL*****

*****END HIGHLY CONFIDENTIAL*****

9. While XO can, under its agreement with AGL, *****BEGIN HIGHLY CONFIDENTIAL*****

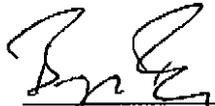
*****END HIGHLY CONFIDENTIAL*****, it would be a very expensive way to reach customers in these buildings. The economics of using AGL for last mile access to a customer that happens to be in the buildings the AGL network reaches is such that the customer must be one that demands extreme higher end bandwidth. Indeed, XO would consider using AGL only where an end user had the need for multiple 1 Gbps circuits or a 10 Gbps pipe and/or at price points that pay for the infrastructure. As I mentioned earlier, XO will use AGL to *****BEGIN HIGHLY CONFIDENTIAL***** *****END**

HIGHLY CONFIDENTIAL*** But for meeting the bandwidth needs of most of XO's existing and potential customers, AGL is not and will not be an economically feasible wholesale alternative to, say, Qwest unbundled loops or enhanced extended loops, or EELs.

REDACTED - FOR PUBLIC INSPECTION

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct to the best of my information and belief.

Executed on September 21, 2009



Bryan Burns

APPENDIX B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

DECLARATION OF MICHAEL LASKY

1. My name is Michael Lasky. I am a Principal at Widelity, Inc. ("Widelity"). My business address is 4031 University Drive, Suite 200, Fairfax, Virginia 22030.

2. Widelity is a professional services company that provides a wide range of consulting services to the telecom industry. Radio Frequency ("RF") design and deployment is one of our primary practice areas. We have deep expertise in the design, planning and deployment of Local Multipoint Distribution System ("LMDS") links and services. Widelity has built and deployed more than 125 LMDS links and hubs for multiple customers.

3. I have been asked to respond to a portion of the Declaration of Robert H. Brigham that was attached to Qwest's petition for forbearance in the above-captioned proceeding. Specifically, I have been asked to comment on paragraph 45 of Mr. Brigham's Declaration in which he contends that an affiliate of XO Communications, LLC ("XO") -- Nextlink-- offers "a range of broadband wireless services" in Phoenix to both enterprise and wholesale customers, and that these offerings compete directly with Qwest to "provide 'last mile' connectivity to customers."

4. Although not expressly stated by Mr. Brigham, the implication is that Nextlink's LMDS services can be used widely as a Wireless Local Loop ("WLL") replacement for Qwest's copper loop facilities. Such a conclusion would be erroneous. Based upon my own recent and extensive experience with LMDS, I can state unequivocally that the 28 GHz links used to deliver LMDS services (both point-to-point and point-to-multipoint) are not a general substitute for copper loop circuits. Although such 28 GHz fixed wireless links are a viable method of connectivity in certain very specific instances, they can only be economically used for very high capacity links (at least 10 megabits) and can only be used to reach commercial buildings that meet a set of highly limiting engineering criteria. I explain the bases for my conclusion hereafter.

5. One of the foremost limitations of LMDS is that it is a line-of-sight technology. Broadcast microwave signals operating at 28 GHz are transmitted to receiver dishes that typically are installed on the top of commercial buildings. At that high frequency, line-of-sight is required for adequate signal performance. Many times both ends of a circuit are not and cannot be line-of-sight. There often are physical features blocking the necessary signal path. Intervening buildings, trees, or hills are typical obstacles. These impediments disqualify a large proportion of sites from LMDS use. Indeed, in many markets line-of-sight is the exception rather than the rule.

6. A second major impediment to wide-scale use of LMDS as a loop replacement vehicle is that LMDS equipment is very expensive to deploy. Volume in this band is relatively low which prevents manufacturers from "ramping up" production sufficiently to permit them to pass along volume pricing. When built into the customer pricing model, circuit costs reflect these higher deployment costs, making a price-competitive offering difficult to provide. As a

practical matter, this means that Nextlink can compete only for customers in need of DS-3, OC-3, and OC-12 services, even in those geographic locations which are conducive to deployment of LMDS links. LMDS cannot be used economically to replace Qwest's DS-0 or DS-1 loops.

7. LMDS also is hampered by limited range. A typical deployment that can satisfy carrier-grade Service Level Agreements ("SLAs"), which specify a mandatory level of availability, is in the range of 3 to 5 miles. This meets the needs of some customers, but significantly limits the ubiquity of the offering in many markets.

8. The fact that LMDS requires a hub and spoke architecture presents yet another problem. Hubs – usually located on commercial rooftops – are expensive and time consuming to acquire. Lead times are long and, when rooftop real estate must be acquired, the inherent delay is a major impediment to the timely delivery of service to customers. In addition, rooftop rental is quite expensive in urban markets, which adds significantly to the cost of the circuit for customers.

9. In addition, LMDS hubs can be placed only in very limited locations. Hubs must be carefully chosen and are limited in capacity. Only buildings identified as having significant fiber capacity to the premise can be considered for hub deployment options. Zoning requirements and landlords often limit the number and size of antennas that can be installed on a roof, which limits the total number of customers that can be served from the hub. Once a hub is filled, the process of acquiring and provisioning another hub must start anew. In some markets, the number of available and qualifying buildings is quite limited, which effectively caps the number of customers that can be served in those markets.

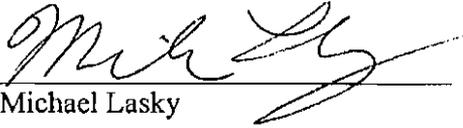
10. Since LMDS requires rooftop-to-rooftop deployment, it is useful only where service providers can obtain connectivity between the building rooftop and a specific customer

premise within the building. Buildings are sometimes designed with tenant connectivity from the basement up to the tenant floor. Revising the deployment scheme to facilitate roof down connectivity often can require costly construction and significant customer disruption.

11. To summarize, LMDS-based WLL services can be an attractive alternative last-mile connectivity option in certain very limited circumstances. However, due to technical problems and high cost, use is necessarily limited and spotty. LMDS can only be used to serve customers that can be reached on a line-of-sight basis, that are located in a building where rooftop antenna rights can be obtained, and that have connectivity available from the customer premise floor to a rooftop. Even then, the current economics of LMDS dictate that it can be used economically only for very high capacity services, and never as a replacement for the copper-based DS-0 and DS-1 local loop facilities of Qwest.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed on September 21, 2009


Michael Lasky