Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas	)	WC Docket No. 06-172
	)	
Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver, Minneapolis-St.Paul, Phoenix, and Seattle Metropolitan Statistical Areas	)	WC Docket No. 07-97

REPLY COMMENTS OF
SPRINT NEXTEL CORPORATION

On behalf of its wireless, long distance, broadband, and competitive local exchange carrier ("CLEC") operations, Sprint Nextel Corporation ("Sprint") submits the following reply comments in the above captioned matter.[1]

I. THE COMMISSION SHOULD ADOPT A MARKET POWER TEST IN THESE FORBEARANCE PROCEEDINGS

Several commenters urged the Federal Communications Commission ("Commission") to uphold its earlier determination that additional forbearance should be

[1] Public Notice, Wireline Competition Bureau Seeks Comment on Remands of *Verizon 6 MSA Forbearance Order* and *Qwest 4 MSA Forbearance Order,* DA 09-1835 (rel. Aug. 20, 2009).

Petitions of 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, WC Docket No. 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21294, para. 1 (2007) ("*Verizon 6 MSA Forbearance Order*"), remanded, Verizon Tel. Cos. v. FCC, No. 08-1012, slip. op. (D.C. Cir. June 19, 2009) ("*Verizon v. FCC*").

Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11730, para. 1 (2008) ("*Qwest 4 MSA Forbearance Order*"), remanded, Qwest Corporation v. FCC, No. 08-1257 (D.C. Cir. Aug. 5, 2009) (*Qwest Corporation v. FCC*).

denied to Verizon and Qwest in the MSAs in question. Sprint agrees with these commenters that the Commission should use a competitive analysis in reviewing the record evidence to reach a well reasoned, supportable conclusion that additional forbearance under Section 10 of the Act is not appropriate.

Cbeyond, Inc., Integra Telecom, Inc., One Communications Corp. and tw telecom inc. (the "Cbeyond Group") propose that the Commission begin its analysis by "defining relevant product markets based on customer demand patterns and by utilizing an appropriate geographic area." Then, "the level of competition within the relevant market" could be assessed "by undertaking a market power analysis." The outcome should be that the Commission "deny forbearance unless the incumbent LEC faces a sufficient level of actual competition in a relevant market to discipline the rates, terms and conditions under which a LEC offers service."[2]

Broadview Networks, Inc., Covad Communications Company, NuVox, and XO Communications, LLC (the "Broadview Group") advocate that the Commission "embrace the market power analysis employed by the Commission in a variety of proceedings over the past twenty years" because it "requires a robust assessment of the competitive environment in the product and geographic markets at issue".[3] These commenters propose that a "market power oriented inquiry would begin with an evaluation of actual competition in the particular product and geographic market at issue."[4]

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[2] Comments of Cbeyond, Inc., Integra Telecom, Inc., One Communications Corp. and tw telecom inc., WC Docket Nos. 06-172 and 07-97 at 9.

[3] Comments of Broadview Networks, Inc., Covad Communications Company, NuVox, and XO Communications LLC, WC Docket Nos. 06-172 and 07-97 at 2.

[4] *Id*. at 4.

Covad Communications Company, Alpheus Communications, L.P., U.S. TelePacific Corp., Mpower Communications Corp., First Communications, Inc., Deltacom, Inc., TruCom LLC, and TDS Metrocom, LLC (the "Covad Group") note that the Commission's "traditional market power analysis" requires "identifying the relevant product and geographic markets," then "identifying the market participants," and "determining whether the incumbent retains market power".[5]

Sprint agrees that the Commission should apply a market power analysis when assessing the Verizon and Qwest forbearance requests. The Commission, however, will need to explain its deviation from the analytical framework employed in the *Omaha* and *Anchorage Forbearance Orders*.[6] Sprint agrees with COMPTEL that the Commission should rely upon its experience following the *Omaha Forbearance Order* to conclude that the forbearance standard it applied in that case "worked neither to promote nor enhance competition as Section 10 of the Communications Act requires."[7]

As COMPTEL observed, both "Section 10 of the Act and the public interest demand that the Commission apply a more exacting standard than was applied in the *Omaha Forbearance Order* before determining that a market is so competitive that it is

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[5] Comments of Covad Communications Company, Alpheus Communications. L.P., U.S. TelePacific Corp., Mpower Communications Corp., First Communications, Inc., Deltacom, Inc., TruCom LLC, and TDS Metrocom, WC Docket Nos. 06-172 and 07-97 at 27.

[6] *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) ("*Omaha Forbearance Order"*), *aff'd, Qwest Corp. v. FCC,* 482 F.3d 471 (D.C. Cir. 2007); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. §160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area,* 22 FCC Rcd 16304 (2007) ("*Anchorage Forbearance Order"*).

[7] Comments of COMPTEL, WC Dockets No. 06-172 and 07-97 at 4.

no longer necessary to enforce" the provisions of the Act "including Section 251(c)(3) and Section 271(c)(2)(B)(ii)."[8]

II. WHOLESALE COMPETITION DID NOT DEVELOP FOLLOWING THE OMAHA FORBEARANCE ORDER

Recent competitive market performance in the Omaha market demonstrates that wholesale competition did not develop following deregulation of Qwest's network. The Covad Group noted that the "alleged competition from Cox has caused Qwest to do absolutely nothing to keep wholesale customers in Omaha."[9] Sprint agrees with the Covad Group that the "incontrovertible fact that Cox was not a wholesale provider of last mile access to nearly all non-residential end user locations" meant that wholesale competition was unlikely to develop[10] As the Broadview Group observed, the "lesson learned from Omaha is that if the ILEC and a single competitor control the only last-mile facilities available to reach customers in a particular geographic area, a wholesale market will not develop."[11]

COMPTEL noted that both Integra Telecom and McLeodUSA have been forced from the Omaha market because Qwest failed to perform as predicted by the Commission and offered no competitive wholesale products.[12] The lesson learned from Omaha should be applied to the Verizon and Qwest MSAs where forbearance is sought. That lesson is that wholesale competition will not develop in a non-residential market where one firm controls the vast bulk of the last mile facilities. As a result, forbearance is not justified.

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[8] *Id.* at 5.

[9] Covad Group Comments at 10.

[10] *Id.*

[11] Broadview Group Comments at 17.

[12] COMPTEL Comments at 6-11.

Sprint agrees with the Covad Group, the Broadview Group, the Cbeyond group and COMPTEL that the Commission should reject the *Omaha Forbearance Order* standard and adopt a market power analysis in its place. The evidence already on file in the *Verizon 6 MSA* and *Qwest 4 MSA* proceedings, if subjected to a market power analysis, will clearly indicate that Verizon and Qwest continue to have market power in the MSAs in question and that forbearance should be denied.

III. CONCLUSION

Sprint supports the Broadview Group, the Covad Group, the Cbeyond Group and COMPTEL recommendation that the Commission adopt a market power analysis in the Verizon and Qwest MSAs. The experience from the *Omaha Forbearance Order* should encourage the Commission to conduct a full examination of the evidence on file under a last mile non-residential market power analysis. Additional forbearance should not be allowed until a vibrant wholesale last mile market has developed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Sprint Nextel Corporation was filed electronically or via US Mail on this 21st day of October, 2009 to the parties listed below.

/s/ Jo-Ann Monroe
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