

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

In the Matters of

Petitions of the Verizon Telephone Companies for)
Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston,) WC Docket No. 06-172
New York, Philadelphia, Pittsburgh, Providence and)
and Virginia Beach Metropolitan Statistical Areas)

Petitions of Qwest Corporation for Forbearance Pursuant)
to 47 U.S.C. Section 160(c) in the Denver,) WC Docket No. 07-97
Minneapolis-St. Paul, Phoenix, and Seattle)
Metropolitan Statistical Areas)

**REPLY COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

The Washington Utilities and Transportation Commission (UTC) submits the following reply comments in response to the Federal Communications Commission's (Commission's) Public Notice¹ seeking comment on how the Commission should explain its departure from precedent in its competition analysis in the *Qwest 4 MSA Forbearance Order*² in light of the D.C. Circuit's guidance in the recent *Verizon Tel. Cos. v. F.C.C.* decision.³ In its decision, the court stated that it may "be reasonable for the [Commission] to consider only evidence of actual

¹ *Wireline Competition Bureau Seeks Comment on Remands of Verizon 6 MSA Forbearance Order and Qwest 4 Forbearance Order, Pleading Cycle Established*, WC Docket Nos. 06-172, 07-97, Public Notice, DA 09-1835 (rel. August 20, 2009) ("Remand Proceeding").

² *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, 1730, (2008).

³ *Verizon Tel. Cos. v. F.C.C.*, 570 F.3d 294 (D.C. Cir. 2009).

competition rather than actual and potential competition” in the marketplace.⁴ The UTC urges the Commission to consider only evidence of actual competition for the simple reason that broad assertions about potential competition are, by their very nature, speculative and unreliable. If anything, the Commission should be more rigorous in its analysis of actual competition.

The UTC previously submitted comments opposing Qwest’s forbearance petition noting then, as now, that:

[t]he UTC has grave concerns regarding the scope of Qwest's Seattle Petition and the adverse effects it will have on competition if granted in whole. The Washington Legislature has given the UTC statutory authority to regulate telecommunications companies in the public interest and promote diversity in the supply of telecommunications services throughout the state. In doing so, the UTC is also allowed to permit flexible regulation of competitive telecommunications companies and services. In several regulatory proceedings over the past decade, the UTC has endeavored to establish balanced policies to ensure that effective competition develops in the state wherever possible and to ensure conditions that promote competition. Additionally, as competition has developed in Washington, the UTC has actively responded to efforts by incumbent local exchange carriers (“Incumbent LECs” or “ILECs”), particularly Qwest, to reduce, streamline or eliminate state regulation where conditions warrant. The evidence Qwest presented to the UTC as part of these investigations demonstrated that competitors rely on UNEs [unbundled network elements] to enable them to offer telecommunications end-users effectively competitive alternatives to Qwest services. However, the vast scope of the relief Qwest seeks in the Seattle Petition, if granted, would undercut the very foundation and delicate balance of the UTC's past decisions regarding reduced or streamlined state regulation of Qwest's services. Accordingly, as discussed more fully below, the UTC opposes Qwest's Seattle Petition to the extent that it seeks forbearance from the unbundling obligations of Section 251(c) and Part 61 of the Commission's regulations as they apply to Qwest's interstate switched and special access services⁵

In the Remand Proceeding, our state colleagues at the Arizona Corporation Commission (“ACC”) and Minnesota Public Utilities Commission take the position that the Commission made an appropriate determination regarding the level of actual competition in each relevant market in rejecting Qwest’s forbearance request. Indeed, the ACC takes it a step further,

⁴ *Id.* at 18.

⁵ Comments of the Washington Utilities and Transportation Commission, WC Docket No. 07-97, submitted August 29, 2007.

advocating for even greater scrutiny of actual competitive conditions, including the availability of meaningful wholesale alternatives and separate assessments of the small and medium enterprise markets from mass market conditions. The ACC argues that this level of scrutiny is necessary to preserve the pro-competitive intentions of the Telecommunications Act of 1996.⁶

The UTC agrees. While competitive conditions continue to evolve at the inter- and intra-modal level, broad assertions regarding potential competition are not helpful. Nor do they represent an appropriate or reasonably effective measure by which to eliminate important federal regulatory requirements governing necessary wholesale inputs to local exchange competition. In particular, UNE-based competition and interstate special access services remain vitally important contributions to competition in the enterprise market and should not be discarded as a result of actual, competitive conditions in other telecommunications markets. Accordingly, the UTC requests that the Commission continue to apply a factual and sufficiently detailed examination of actual, competitive conditions in each telecommunications market and sub-market in assessing the merits of Qwest's forbearance request.

Respectfully submitted this 21st day of October 2009,



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⁶ Initial Comments of the ACC, at 2, submitted September 21, 2009.