Qwest
1801 California Street, 10th Floor
Denver, Colorado 80202
Phone 303-383-6671
Facsimile 303-896-1107

Harisha Bastiampillai
Senior Attorney

REDACTED – FOR PUBLIC INSPECTION

Via Courier

January 12, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Suite TW-A325
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act*, WC Docket No. 09-222 -- Request for Confidential Treatment and Confidentiality Justification

Dear Ms. Dortch:

Qwest Communications International Inc. (Qwest) hereby requests confidential treatment for the enclosed Comments that are being filed today in the above-captioned proceeding. The Comments contain some information integrated into the text that is confidential. Each page of the Comments with confidential information (that is, the non-redacted version) has been marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**". As such, Qwest requests that the non-redacted version of the Comments containing confidential information be withheld from public inspection.

Qwest is submitting the non-redacted version of its Comments pursuant to both Commission rules 47 C.F.R. §§ 0.457 and 0.459. The confidential information included in the Comments is competitively sensitive information and thus should not be available for public inspection. A release of this information would have a substantial negative competitive impact on Qwest. Pursuant to Commission rule, 47 C.F.R. § 0.459(b), Qwest provides justification for the confidential treatment of this information in the Appendix to this letter. The non-redacted portions of the Comments contain Qwest's confidential information, including figures for access and other categories of lines that Qwest serves in the Omaha, Nebraska Metropolitan Statistical Area. Such information would not ordinarily be made available to the public, and disclosure may cause substantial competitive harm to Qwest. Accordingly, the non-redacted information is appropriate for non-disclosure under both Sections 0.457(d) and 0.459 of the Commission's rules.

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Because it was not feasible to separate out the confidential and proprietary information, *see* 47 C.F.R. § 0.459(a), without destroying the integrated nature of the information presented in the Comments, Qwest is also submitting today under separate cover a redacted version of the Comments. Each page of the redacted version of the Comments is marked "**REDACTED -- FOR PUBLIC INSPECTION**", with the confidential information omitted. This cover letter includes no confidential information.

For the non-redacted version of its Comments, Qwest is submitting to the Office of the Secretary one original copy, along with providing an extra copy, to be stamped and returned to the courier. The redacted version of Qwest's Comments is being filed electronically via ECFS. Other courtesy copies of Qwest's redacted Comments, pursuant to the Commission's December 14, 2009 Public Notice (DA 09-2590) in WC Docket No. 09-222, are being transmitted via electronic mail, as detailed in the certificate of service associated with the Comments.

Please contact me at the above contact information or Melissa Newman in Qwest's Federal Relations office (202-429-3120) if you have any questions.

Sincerely,

/s/ Harisha Bastiampillai

Enclosures

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APPENDIX

Confidentiality Justification

Qwest requests confidential treatment of some of the information provided in its Comments of January 12, 2010, which are being filed in WC Docket No. 09-222. This information is competitively sensitive and its disclosure would have a negative competitive impact on Qwest were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under both 47 C.F.R. §§ 0.457 and 0.459.

47 C.F.R. § 0.457

Specific information in Qwest's Comments is confidential and proprietary as "commercial or financial information" under Section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with Qwest's ongoing business plans and operations. Therefore, in the normal course of Commission practice this information should be considered "Records not routinely available for public inspection."

47 C.F.R. § 0.459

Specific information in Qwest's Comments is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

Qwest requests that specific information in its comments be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. This information is competitively sensitive data that Qwest maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative competitive impact on Qwest. The confidential information is contained in the non-redacted version of Qwest's Comments, each page of which is marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**".

Commission proceeding in which the information was submitted

The information is being submitted in connection with Qwest's January 12, 2010 Comments in WC Docket No. 09-222, *In the Matter of Petition for Expedited Rulemaking to Adopt Rules Pertaining to the Provision by Regional Bell Operating Companies of Certain Network Elements Pursuant to 47 U.S.C. § 271(c)(2)(B) of the Act.*

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

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The competitive information designated as confidential includes detailed information regarding Qwest's number of access lines, business lines and residence lines in connection with the provision of service in the Omaha, Nebraska Metropolitan Statistical Area. As noted above, this data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

This type of commercial information would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of its confidential and proprietary information would cause it competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of Qwest's business.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the non-public information disclosed in its Comments as confidential, and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current matters, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Petition for Expedited Rulemaking to Adopt	)	WC Docket No. 09-222
Rules Pertaining to the Provision by	)	
Regional Bell Operating Companies of Certain	)	
Network Elements Pursuant to 47 U.S.C. §271(c)(2)(B)	)	
Of the Act	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Craig J. Brown
Harisha J. Bastiampillai
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6671
Craig.Brown@qwest.com
Harisha.Bastiampillai@qwest.com

Attorneys for

QWEST COMMUNICATIONS
INTERNATIONAL INC.

January 12, 2010

REDACTED – FOR PUBLIC INSPECTION

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 1

II. THE SECTION 271 COALITION DOES NOT DEMONSTRATE THE NEED FOR NEW, OR ENHANCED, SECTION 271 REGULATION AND ENFORCMENT 5

A. Qwest Provides CLECs With Viable Alternative Products On A Wholesale Basis 6

B. The Section 271 Coalition's Flawed Pricing Comparison In Regard To Special Access Services Undermines Its Argument About Allegedly Unreasonable Rates And Terms For Said Services 10

C. Qwest Continues To Provide CLECs With Quality Wholesale Service 12

III. SECTION 271 WAS INTENDED TO BE A DEREGULATORY "CARROT" AS OPPOSED TO A REGULATORY "STICK" 14

A. Sections 201 And 202 Of The Act Provide The Regulatory Structure Congress Intended For Delisted UNEs 16

IV. THE SECTION 271 COALITION'S PROPOSED REGULATIONS ARE OVERREACHING 18

A. Pricing 18

1. There is no statutory basis for the Section 271 Coalition's proposed pricing standard 18

2. There is no basis to depart from market-based pricing for Section 271 elements 19

B. Non-Pricing Regulations 21

C. There Is No Basis to Lift Use Restrictions On UNEs 22

V. CONCLUSION 26

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
	)	
Petition for Expedited Rulemaking to Adopt	)	WC Docket No. 09-222
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Of the Act	)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

I. INTRODUCTION AND SUMMARY

Qwest Communications International Inc. (Qwest) submits these comments in accord with the Federal Communications Commission's (Commission) *Public Notice* in the above-referenced docket.[1]

The Section 271 Coalition Petition asks this Commission to implement and apply a myriad of new rules to Section 271 checklist elements under the (mistaken) premise that Congress in enacting the Telecommunications Act of 1996 left a regulatory vacuum in regard to an enforcement mechanism for Section 271 checklist elements. Essentially, the Coalition asks to extrapolate the standards from Section 251(c) in regard to unbundled network elements to Section 271 in regard to Section 271 checklist items. There are three fundamental problems with this approach. One, the Coalition fails to provide a sufficient justification for these new rules. Two, the Coalition mistakenly presumes that Congress failed to provide an adequate enforcement mechanism for Section 271 checklist items. And, finally, the Coalition ignores the clear legislative intent, as identified by this Commission, and affirmed by the U.S. Court of

[1] *Public Notice*, WC Docket No. 09-222, "Pleading Cycle Established for Comments on Petition for Expedited Rulemaking Regarding Section 271 Unbundling Obligations", DA 09-2590 (Dec. 14, 2009).

Appeals for the D.C. Circuit that Section 251(c) limitations and restrictions should not be applied to Section 271 checklist elements. As a result, the Commission should deny the Coalition's petition for rulemaking.

The first issue is that the Section 271 Coalition's Petition is a solution in search of a problem. There is simply no predicate for the radical regulatory overhaul the Section 271 Coalition proposes, much less for the expedited implementation the Section 271 Coalition requests. The Section 271 Coalition's justification, which is anecdotal at best, withers in the face of the competitive nature of not only the interexchange and wireless markets, but the local telecommunications market as well.

Also problematic, at least from Qwest's perspective is that it attempts to justify the need for enhanced regulation by making general characterizations about the BOC's purported dominance of long distance and wireless markets. While those characterizations appear to be off-base for all three of the BOCs, they certainly do not reflect Qwest's market position. Qwest is a fraction of the size of AT&T and Verizon and does not even provide facilities-based wireless service. The Section 271 Coalition also ignores Qwest's consistently improving wholesale performance throughout the years and its willingness to seek mutually-beneficial solutions for its CLEC clients. The Coalition does invoke the oft-cited experience of McLeod in the Omaha market after Qwest received forbearance in nine wire centers. But as will discussed further below, the Coalition glosses over important facts in the McLeod/Qwest negotiations, and as a result mischaracterizes the options that McLeod possessed in regard to alternative products. In this context, the Coalition's main issue is with rates, terms and conditions of special access services, which is the subject of a separate proceeding. In fact initial comments in that

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proceeding are due a week after this filing. Thus, there's certainly no need to open another rulemaking to look at the same issues.

Second, the Coalition ignores the mechanism that Congress intended to govern Section 271 post market-entry issues. The nondiscrimination standard and just and reasonable pricing standard of Sections 201 and 202 provide the regulation/enforcement mechanism that the Coalition claims is lacking. The application of Section 201 and 202 principles is well-established and applies, and has applied, to common carrier services for years.

Finally, the Coalition mistakenly presumes that the TELRIC and nondiscrimination standards of Sections 251 and 252 should be applied to Section 271 checklist elements. This presumption, however, misconstrues not only the central goals of the Act, but also the central principles governing access to network elements and impairment. In *AT&T v. FCC*, Justices Scalia and Souter both utilized an analogy of a ladder needed to change a light bulb to conceptualize network elements and the corresponding concept of impairment. Initially, if a person does not have a ladder he can borrow one from someone else. But the understanding is that he may not utilize that ladder forever. The borrower would eventually be expected to return the ladder and get his own ladder or borrow another one from a third party. Likewise, at some point CLECs are expected to either self-provision their own network elements or find a third-party source other that the ILEC.

Justice Scalia took the analogy a step further to incorporate the concept of impairment. A person would not be "impaired" in changing the light bulb if he or she had to reach to change the bulb while on the ladder.[2] The person would not be entitled to larger ladder simply because he had to expend effort to reach the bulb. Likewise, CLECs are not impaired if they have to expend

[2] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 390, n. 11 (1999) (subsequent history omitted).

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resources to deploy services. The goal of the Act is not to allow CLECs access to BOC network elements in perpetuity. The goal of the Act is to wean the CLEC off reliance on the BOC network elements. Thus, the statute directs the Commission to look at whether a carrier or carriers have self-provisioned the network elements or if there are alternative providers outside of the ILEC's network.[3] The Section 271 Coalition's Petition seeks to perpetuate CLEC access to network elements and to provide such access via enhanced regulation as opposed to market-based transactions.

This promotion of facilities-based competition is embodied not only in the Act, but in the Commission's approach to the development of competitive markets. For instance, in the long distance market, resale was viewed as a way for carriers to provide interexchange service until they developed their own network or found third-party providers.[4] As the D.C. Circuit surmised in *USTA II*:

> After all, HN21the purpose of the Act is not to provide the widest possible unbundling, or to guarantee competitors access to ILEC network elements at the lowest price that government may lawfully mandate. Rather, its purpose is to stimulate competition--preferably genuine, facilities-based competition.[5]

The validity of this approach has been proven in market after market, where facilities-based competition has flourished over the past fourteen years. In markets such as Omaha, cable companies now serve more wireline telephony customers than the BOC -- without acquiring any

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[3] *AT&T v. Iowa Utilities Board*, 525 U.S. 389.

[4] *See, e.g., In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace; Leaco Rural Telephone Cooperative, Inc. Petition for Waiver*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771, 10788 ¶ 23 (1999) ("We believe that resale is an essential facilitator of competition in the long distance industry because it allows independent LECs and other providers to enter the market immediately, and to add their own facilities when it becomes efficient to do so.").

[5] *United States Telecom Association v. FCC*, 359 F.3d 554, 576-77 (D.C. Cir. 2004) (subsequent history omitted) (*USTA II*).

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unbundled network elements from the BOC. Likewise, wireless telephony has become ubiquitous, again without the need for BOC network elements. The story is similar for broadband services, where cable companies continue to serve the majority of consumers, and wireless broadband usage continues to grow -- all without resort to BOC network elements. Given these market facts, there is no need for the Commission to saddle the BOCs with the burdens of the backward-looking unbundling policies sought by the Coalition.

II. THE SECTION 271 COALITION DOES NOT DEMONSTRATE THE NEED FOR NEW, OR ENHANCED, SECTION 271 REGULATION AND ENFORCMENT

The straw man problem purportedly driving the need for this regulatory overhaul is that RBOCs are leveraging the "gains" made by their entry into in-region, interLATA markets while allegedly backsliding in regard to Section 271 performance. Without even addressing the merits of the market figures they posit, there is one glaring omission. The Section 271 Coalition bases their argument on AT&T's and Verizon's purported market dominance without addressing Qwest's relative market position In particular, the Section 271 Coalition bemoans the AT&T and Verizon wireless market share, but fails to address the fact that Qwest has no wireless subscribers.[6] The Section 271 Coalition claims that "it was precisely this dominance that Section 271 -- and its unambiguous requirement to lease each element of the local network at just and reasonable rates without restriction -- was intended to check."[7] But for at least four to seven years depending on the state, CLECs were able to bundle local and long distance service which the RBOCs could not do at all. And UNE access has nothing to do with a carrier's ability to

[6] Qwest's wireless entity, Qwest Wireless, which used to resell the wireless service of Sprint ceased operations in late 2009. Qwest now exclusively markets Verizon Wireless service in its region.

[7] Section 271 Coalition Petition at 12-13.

provide wireless service. The Section 271 Coalition simply fails to posit any causative link between the Section 271 process and the competitive harms they cite.

A. Qwest Provides CLECs With Viable Alternative Products On A Wholesale Basis

The sole reference to Qwest in their section on the "harms" caused by Section 271 entry is the tired and much recycled argument of what transpired in Omaha after Qwest was granted forbearance in regard to UNE regulation in nine wire centers. The Section 271 Coalition alleges that the Commission's assumption of available alternatives to the forborne elements proved to be incorrect because Qwest would not offers these elements at just and reasonable rates and CLECs had no alternative provider of said elements.

While this argument has been raised often, it is not supported by the evidence. First, contrary to the Coalition's assertion, McLeod has not exited from the business market in Omaha, and still serves many business customers in the MSA. Second, as pointed out in *ex partes* filed in the Qwest 4 MSA proceeding, McLeod's claim that it withdrew from the Omaha residential market *because of forbearance* is suspect at best. On September 12, 2007, McLeod filed an application in Nebraska to "cease providing residential services in certain Qwest wire centers," which encompassed over 50 Qwest wire centers in the state.[8] In its petition, McLeod cites as the cause of its decision "the FCC's adoption of changes to the unbundling obligations of Qwest under Section 251(c)(3) that became effective in 2006" and argues that "McLeodUSA is required to purchase Qwest's QPP to continue providing service to these customers."[9] In other words, McLeod lays the blame for its decision on the Commission's *Triennial Review Remand Order* (issued in 2006), in which the Commission found that local switching was no longer required to

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[8] Application No. C-3860, filed Sept. 12, 2007.

[9] *Id.*

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be provided as an UNE, which has nothing to do with forbearance from Section 251 requirements with respect to local loops. The fact is, very few CLECs in Omaha, Phoenix or elsewhere ever served residential customers via the provision of stand-alone UNE loops, and the loss of this option has little impact on residential service.

McLeod argued that Qwest's wholesale rates in Omaha are unreasonably high due to forbearance. McLeod claimed that Qwest's DS0 prices in the nine Omaha forbearance wire centers increased by "30% higher than TELRIC rates."[10] Qwest does not concede that TELRIC provides any standard against which commercial rates should be judged. Even so, it is notable that Qwest's current wholesale rate for DS0s is very close to the most recent TELRIC price established by the Nebraska PSC. McLeod also complained that the DS1 and DS3 wholesale prices available from Qwest in the nine Omaha forbearance wire centers would be priced at the special access rates defined in FCC Tariff No. 1.[11] However, it is significant to note that while Qwest was unable to reach a commercial agreement with McLeod for DS1 services,[12] DS1 UNEs are still being purchased by certain CLECs in the nine wire centers where Qwest has been granted forbearance. That is, there are wholesale lines that have not been migrated to special access services. And even if these circuits were migrated to special access, this would not affect the continued availability of below-cost UNE loop prices in the remainder of the Omaha wire centers. Qwest also makes available term and volume discounts, Regional Commitment Plans, and Price Flex Overlays, all of which provide lower prices than the tariffed month-to-month

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[10] Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, filed July 23, 2007 at 8.

[11] *Id.* at 4.

[12] *Id.* at 11. PAETEC/McLeod claims that Qwest refused to negotiate wholesale prices for voice grade, DS1 and DS3 services in the nine Omaha wire centers where forbearance was granted. They argue that Qwest proposed a "take it or leave it" proposal. *Id.* at 7. This is not a proper characterization, as Qwest did negotiate with McLeod, but was unable to reach an agreement.

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special access rates. Qwest maintains, and the Commission has not found otherwise, that its Special Access pricing is in full compliance with the "just and reasonable" pricing requirements applicable to Section 271 network elements. McLeod also argued that market pressures have not forced Qwest to reduce its special access rates; rather it has increased them.[13] On the contrary, as Qwest and others have previously explained, the special access prices that customers actually pay ILECs for special access services have generally fallen across the board, year after year, for all classes of service since the current pricing flexibility regime was adopted in 1999.[14] As USTelecom reports, the best evidence of those prices -- ILEC average revenues per unit (ARPU):

> show[s] a continued decline in DS-1 and DS-3 special access rates in the most recent periods for which data are available. In the case of one major ILEC, for example, average revenue per unit for DS-1 services decreased by 23 percent in real, inflation-adjusted terms between 2005 and 2008, while ARPU for DS-3 services decreased by 19 percent in real terms during that same period.[15]

According to McLeod, the result of forbearance in Omaha is "forcing competitive carriers out of the market" which "means that those carriers' customers will be forced to go back to Qwest, thereby increasing the margin Qwest will realize from directly serving these end users."[16] While McLeod claimed that forbearance has led to a dramatic decline in competition, and claims customers have been forced to "move back to Qwest," nothing could be further from the truth. In fact, in the Omaha MSA, Qwest has seen a steep decline in its residential *and*

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[13] Opposition of PAETEC Holding Corp. WC Docket No. 09-135, filed Sept. 21, 2009 at 37.

[14] *See* Reply Comments of Qwest Communications Int'l Inc., WC Docket No. 05-25, RM-10593, at 3-6 (filed Aug. 15, 2007) ("*Qwest 2007 Reply Comments*"); Comments of AT&T Inc., WC Docket No. 05-25, RM-10593, at 21-24 (filed Aug. 15, 2007) ("*AT&T 2007 Comments*"); Patrick Brogan & Evan Leo, USTelecom, *High-Capacity Services: Abundant, Affordable, and Evolving* at 43 (July 2009), http://www.ustelecom.org/uploadedFiles/News/News_Items/High.Capacity.Services.pdf ("*USTelecom Report*").

[15] *USTelecom Report* at 43.

[16] *Id.* at 40.

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business lines since forbearance was granted, and Qwest now serves significantly fewer access lines in the Omaha MSA than Cox. Cox has been a very successful competitor in Omaha, and exerts significant competitive pressure on Qwest, PAETEC and all other providers in Omaha.

Each year, the Nebraska PSC releases a report on telecommunications competition to the Nebraska legislature. These reports show the number of residential and business access lines in the state for each local service provider.[17] This report clearly shows the decline in Qwest lines along with the increase in Cox lines over time. In fact, the data show that Cox total access lines in Nebraska increased from 137,306 in 2004 to 169,148 in 2008. Significantly, much of this growth is in the business market that has been McLeod's focus; Cox's business lines increased from 22,201 in 2004 to 43,804 in 2008 -- a 97% increase. Virtually all of Cox's Nebraska customers are in the Omaha MSA. Since Qwest serves many areas in Nebraska and Cox is focused on Omaha, it is appropriate to compare Cox' lines with only Qwest's Omaha MSA access lines to gain a true picture of the competitive landscape. Today, Qwest has***BEGIN CONFIDENTIAL***[redacted]***END CONFIDENTIAL***in the Omaha MSA. Thus, Cox today has many more access lines than Qwest in the MSA. Significantly, while Cox serves many more residential customers than Qwest, Cox has also made significant inroads in the business market. As of the end of 2008, Cox had over 43,000 business lines as compared to***BEGIN CONFIDENTIAL***[redacted]***END CONFIDENTIAL***for Qwest in the Omaha MSA.

The following chart shows the trends in access lines in the Omaha MSA:

*****BEGIN CONFIDENTIAL*****

[17] *See*: http://www.psc.state.ne.us/home/NPSC/communication/comm_annualreports.html.

END CONFIDENTIAL

In addition, Cox is not the only major business competitor in Omaha. According to the Nebraska PSC report, as of December 2008 AT&T (via its TCG network) served 48,144 business customers in Nebraska. It is clear that nearly all of these lines are in the Omaha MSA. Apparently, this competitor was not driven from the market.

In sum, despite the rhetoric of PAETEC/McLeod, the dire prediction of the death of competition in Omaha has simply not occurred, and Omaha is a more highly competitive market today than it was when forbearance was granted.

B. The Section 271 Coalition's Flawed Pricing Comparison In Regard To Special Access Services Undermines Its Argument About Allegedly Unreasonable Rates And Terms For Said Services

The issue of special access pricing is being addressed by this Commission in another proceeding, and Qwest has addressed these issues in that proceeding, so we will not dwell too much on this issue in this proceeding. Nevertheless, we will address some glaring deficiencies in the Coalition's argument on this issue in the context of high-capacity loop and transport availability.

As noted, the special access prices for DS-1 and DS-3 channel terminations, as reflected in average revenue per circuit, declined significantly from the time of implementation of pricing flexibility. In the case of one major ILEC, for example, average revenue per unit (ARPU) for DS-1 services decreased by 23 percent in real, inflation-adjusted terms between 2005 and 2008, while ARPU for DS-3 services decreased by 19 percent in real terms during that same period.[18] Indeed, although advocates and opponents of re-regulation disagree about much else, virtually no one seriously disputes that special access prices are falling. Even a study much touted by pro-regulation advocates (for the pro-regulatory slant of its policy recommendations) acknowledges that, between 2006 and 2007, prices for the three Bell companies fell by 12 percent and 27 percent for DS-1 and DS-3 channel terminations, respectively; by 9 percent and 10 percent for DS-1 and DS-3 fixed transport charges, respectively; and by 13 percent and 18 percent for DS-1 and DS-3 variable transport charges, respectively.[19] While these declines reflect the substantial price concessions ILECs make to many customers, even ILEC "rack rates" -- the rates any customer can pay even if it buys only one circuit for one month -- have also generally declined in recent years.[20] The Section 271 Coalition also impugns Qwest's Regional Commitment Pricing (RCP) which is an ordinary volume discount plan. This Commission has authorized or acknowledged volume and/or term discount plans in a number of contexts.[21]

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[18] *See* Reply Comments of Qwest Communications Int'l Inc., WC Docket No. 05-25, RM-10593, at 3-6 (filed Aug. 15, 2007) ("*Qwest 2007 Reply Comments*"); Comments of AT&T Inc., WC Docket No. 05-25, RM-10593, at 21-24 (filed Aug. 15, 2007) ("*AT&T 2007 Comments*"); Peter Bluhm, National Regulatory Research Institute, *Competitive Issues in Special Access Markets,* 09-02, at 59-60 (Jan. 21, 2009) (NRRI Report).

[19] NRRI Report at 59-60.

[20] At any rate, it would make sense that ILECs would charge more for customers unwilling to commit to volume and term commitments given the high nonrecurring costs that every carrier incurs when deploying service to a given customer. *See* Qwest 2007 Reply Comments at 16-19.

[21] *See id.*

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C. Qwest Continues To Provide CLECs With Quality Wholesale Service

The Section 271 Coalition contends that CLECs continue to "rely heavily" on Qwest's wholesale services, and that some additional enforcement mechanism is needed to provide incentives that are necessary for Qwest to continue to provide adequate service quality. The Coalition fails to provide any evidence that additional regulatory measures are necessary to assure Qwest's excellent performance or that Qwest would not provide such performance without regulatory intervention. In contrast, a significant body of evidence does exist that (1) continuing, significant line losses provide a very significant incentive for Qwest has to provide not only nondiscriminatory service, but excellent service, in order to stem, reverse, or compensate for such losses; and (2) Qwest can and does provide nondiscriminatory service to CLECs for products through commercial agreements.

Regarding the line losses, Qwest values CLECs as important co-carriers in the marketplace, often helping keep customers on Qwest's network. Accordingly, data from measurements used in commercial agreements show that Qwest provides more than adequate service to CLECs. Exhibit A, attached to these Comments, provides a number of graphs that depict various dimensions of service quality results for the QLSP[22] product over a six-month period last year (2009). As shown in those graphs:

(1) Out of Service Troubles Cleared within 24 Hours (OOS<24) percentages track well with the retail analogue results and are almost always better that the retail result.

(2) Mean Time to Restore (MTTR) times are always better for QLSP than for the retail result.

(3) Trouble Report Rate for QLSP is also always better than for retail residence/business and is always better (lower) than 1%, which is widely considered to be excellent.

[22] Qwest Local Service Platform, formerly known as Qwest Platform Plus (QPP) or Unbundled Network Element Platform (UNE-P).

(4) Installation Commitments Met for QLSP is nearly 100% each month and, in such cases, comparison with retail is moot.

(5) The average Installation Intervals for QLSP are always better (shorter) than for the retail analogue of residence/business and are consistently less than 3.5 business days on average.

This service quality reflects similarly excellent performance as reflected in Qwest's overall PAP payments. During the past five years, while our market share was in steady decline, the data below (reflecting the 14-state view and Arizona shown as one state-specific example), the service quality that Qwest supplied to wholesale customers steadily and consistently improved as reflected by the payment schedule (and many underlying process measurements).

PAP PAYMENTS (WHOLESALE)

YEAR	**PAYMENT**
2004	$10,076,032.00
2005	$7,323,447.00
2006	$4,814,116.00
2007	$4,367,343.00
2008	$1,675,731.00

Thus, there is simply no basis for the argument that additional regulation is necessary for Qwest to continue to provide compliant service levels. On the other hand, there is significant evidence that Qwest already has incentives to provide adequate service to CLECs.

III. SECTION 271 WAS INTENDED TO BE A DEREGULATORY "CARROT" AS OPPOSED TO A REGULATORY "STICK"

The entrance into interstate, interLATA markets afforded by Section 271 of the Act was a *quid pro quo* for the RBOCs opening local markets to competition.[23] Pursuant to the provisions of the 1996 Act, RBOCs would open up local telecommunications markets to competition, and then apply for in-region, interstate, interLATA market entry pursuant to Section 271 of the Act.

As the legislative history behind the Act indicates, the ultimate goal of the Section 271 process was promoting facilities-based competition. Because of this, a Section 271 applicant had to demonstrate the presence of a facilities-based competitor or competitors and this requirement could not be met through the provision of telephone exchange service offered "exclusively through the resale of the BOC's telephone exchange service."[24] The competitor "must offer telephone exchange service either exclusively over its own facilities or predominantly over its own facilities[.]"[25] The BOCs successfully demonstrated the existence of such competitive conditions, and facilities-based competition has continued to grow since Section 271 entry.

Next month will mark the 14th anniversary of the enactment of the Act. The Section 271 Coalition was accorded ample opportunity to become self-sustaining competitors. The whole premise of Section 251 unbundling was to provide an opportunity for competitors to lease network elements when they were impaired in producing these network elements. Through the *Triennial Review Order* and *Triennial Review Remand Order* process, which took four years of

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[23] *Qwest Corporation v. U.S.*, 48 Fed. Cl. 672, 696 (2001). *See also, In the Matter of Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, 18956 ¶ 26 (2003) ("...the purpose of our section 271 review is to determine whether a BOC has opened its local market to competitors[.]".

[24] Conference Report No. 104-458 on S. 652, 104th Cong., 2d Sess., at CR-147.

[25] *Id.* at CR-147-48.

exhaustive rulemaking proceedings and appellate litigation, CLECs were found not to be impaired in regard to certain network elements either on a national level or in certain wire centers.[26] Given this lack of impairment, it is puzzling why the CLECs claim they need further regulatory intervention.

The Coalition asks this Commission to ignore Congress' intent that the highly regulatory UNE unbundling scheme give way to a much more market-driven system as competition emerges. In the *Triennial Review Remand Order*, the Commission stated:

> In this Order, the Commission takes additional steps to encourage the innovation and investment that come from facilities-based competition. By using our section 251 unbundling authority in a more targeted manner, ***this Order imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition***. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition.[27]

The Commission also stated:

> Our unbundling rules are designed to remove unbundling obligations over time as carriers deploy their own networks and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets.[28]

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[26] Finding the Commission's fourth attempt at unbundling determinations to be a "charm," the D.C. Circuit affirmed the Commission's determinations. *Covad Communications. Co. v. FCC*, 450 F.3d 528, 531, 534 (D.C. Cir.), *reh'g denied* (Aug. 17, 2006).

[27] *See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (*Triennial Review Order*), *corrected by Triennial Review Order Errata,* 18 FCC Rcd 19020 (2003); *on remand*, 20 FCC Rcd 2533, 2535 ¶ 2 (2005) (footnotes omitted; emphasis added) (*Triennial Review Remand Order*), *aff'd sub nom.*, *Covad Communications. Co. v. FCC*, 450 F.3d 528 (D.C. Cir.), *reh'g denied* (Aug. 17, 2006).

[28] *Triennial Review Remand Order*, 20 FCC Rcd at 2536 ¶ 3.

The de-listing of network elements from Section 251 unbundling obligations based on a finding of non-impairment is an integral part of the transition from a highly regulatory scheme to a more market-driven system. In de-listing a UNE, the Commission has specifically determined that CLECs are no longer impaired without access to that element, and that cost-based TELRIC rates are no longer necessary. When the Commission determined in the *Triennial Review Order* or *Triennial Review Remand Order* that CLECs are not impaired without access to an element, it specifically determined that market conditions are such that a CLEC is highly likely to have alternatives to the RBOC element. The Coalition is attempting to avoid the effects of these determinations and turn the *Triennial Review Remand Order* and preceding Court Orders on its head.

A. Sections 201 And 202 Of The Act Provide The Regulatory Structure Congress Intended For Delisted UNEs

In the thicket of the Section 271's Coalition rote recitation of the structure of the Telecommunications Act of 1996 requirements, there is one point on which Qwest agrees with the Section 271 Coalition -- once Checklist Elements are not subject to Section 251 unbundling requirements they become subject to Section 201 and Section 202 requirements.[29] Unfortunately the analyses that lead to this point and results from this point are a source of substantial divergence.

As the Section 271 Coalition notes, five appellate circuits have addressed the issue of jurisdiction over Section 271 issues and determined that Section 271 is a grant of authority to the Commission and does not provide a role to the state commissions save for the initial recommendation as to a RBOC's Section 271 application for in-region, interLATA entry.[30] In

[29] *See* Section 271 Coalition Petition at 9.

[30] *Id.* at 16-17.

light of these rulings, the Section 271 Coalition bemoans the "failure" of the Commission to establish "any regulations that establish parameters for or in any way govern the offering of Checklist Elements[]" or "procedures for challenging the sufficiency of a BOC's Checklist offering."[31] Such regulations and procedures would be superfluous given the existence of Sections 201 and 202 of the Act. The Section 271 Coalition is asking for a comprehensive regulatory structure to address Section 271 issues when there is decades of Commission precedent as to Section 201 and 202 issues, and, in particular, what is just and reasonable and nondiscriminatory.

The statutory basis for the Commission's regulation of the rates, terms and conditions of common carrier offerings is rooted in Sections 201 and 202, and the Commission's history of applying these provisions is more than sufficient to address any issues pertaining to Section 271 checklist items.

In fact, even the current mechanism voluntarily offered by RBOCs to ensure no backsliding in regard to Section 271 checklist items, the Performance Assurance Plans (PAPs), was not viewed by this Commission as a necessary predicate for Section 271 approval.[32] The Commission emphasized that the Qwest's voluntary adoption of the PAP was only a component of the Section 271 public interest consideration. The Commission noted at the time that the PAP was by no means the only way of ensuring nondiscriminatory provision of service.[33] If the

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[31] *Id.* at 17 (footnote omitted).

[32] *In the Matter of Application by Qwest communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26544-45 ¶ 440 (FCC 2002) (*Qwest Nine State 271 Order*).

[33] The Commission observed "the PAP is not the only means of ensuring that a BOC continues to provide nondiscriminatory service to competing carriers." *Id.*, 17 FCC Rcd at 26548 and n. 1616. In addition to the monetary payments at stake, the Commission stated "we believe Qwest faces other consequences if it fails to sustain an acceptable level of service to competing

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Commission deemed that a Section 271-specific enforcement mechanism was not needed when the RBOCs were just entering the long distance market, and that its current enforcement mechanisms would have sufficed in the absence of a PAP, it is preposterous to suggest that years later, a new regulatory mechanism is needed.

IV. THE SECTION 271 COALITION'S PROPOSED REGULATIONS ARE OVERREACHING

The foregoing discussion provides the Commission ample basis to summarily dismiss the Section 271 Coalition's Petition. For this reason, Qwest will not address each infirmity in the Coalition's proposed regulations. Qwest will address, however, some particularly egregious proposed regulations that demonstrate the intrinsically overreaching nature of the regulations in general.

A. Pricing

1. There is no statutory basis for the Section 271 Coalition's proposed pricing standard

As noted above, Section 271 checklist elements are governed by Section 201(b) of the Act. When Congress wanted a different pricing standard to be utilized for interconnection and UNE facilities it specified such a standard in Section 252(d)(1). Congress did not explicitly, or implicitly, set a different pricing standard for Section 271 checklist elements. As the D.C. Circuit observed:

> ***With regard to pricing, the CLECs have no serious argument that the text of the statute clearly demonstrates that the § 251 pricing rules apply to unbundling pursuant to § 271 checklist items four, five, six, and ten. The CLECs contend that checklist item two specifies that the § 252(d)(1) pricing rules apply to all unbundled "network elements," but checklist item two says no such thing.*** Rather, checklist item two by its terms requires only "nondiscriminatory access to

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carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with antitrust and other legal actions." *Id.*, 17 FCC Rcd at 26548 ¶ 443.

> network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)"-- it says nothing suggesting that the requirements of those sections also apply to the independent unbundling requirements imposed by the other items on the § 271 checklist. The CLECs also claim that it was unreasonable for the Commission to apply a different pricing standard under § 271, but we see nothing unreasonable in the Commission's decision to confine TELRIC pricing to instances where it has found impairment. See generally Order P P 657-64.[34]

The Coalition argues that *nonrecurring* rates for 271 "Checklist Elements" should be set equal to the nonrecurring rates for the equivalent Section 251 unbundled element, and that *recurring* rates for 271 "Checklist Elements" should be set at a level equal to no more than 22% above the "forward looking economic cost determined in compliance with § 51.505 prior to the inclusion of any allocation of forward-looking common costs calculated in accordance with § 51.505(c)." (Proposed rule § 53.609). Thus, the prices for Section 271 "Checklist Elements" proposed by the Coalition are set *equal* to TELRIC for nonrecurring elements, and set based on a markup of TELRIC less common for recurring elements. The recurring rate could be greater or less than the Section 251 TELRIC rate depending on the level of common cost markup in the existing TELRIC price. In sum, the Coalition is proposing rates for Section 271 elements based on TELRIC. This proposal, however, revisits the issues raised in *USTA II*, in that the Commission is being asked to essentially impose Section 251 unbundling obligations without a finding of impairment.

2. There is no basis to depart from market-based pricing for Section 271 elements

While relying on irrelevant special access and payphone orders, completely ignore the Commission's more recent findings that are specific as to how the prices for Section 271 elements should be set. In fact, the Commission has clearly stated for Section 271 elements -- which are offered when the Commission has determined an element to be "non-impaired" that

[34] *USTA* II, 359 F.3d at 589 (subsequent history omitted).

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"market prices should be permitted to prevail . . . rather than requiring forward-looking prices."[35]

The Commission explained further:

> Where there is no impairment under section 251 and a network element is no longer subject to unbundling, we look to section 271 and elsewhere in the Act to determine the proper standard for evaluating the terms, conditions, and pricing under which a BOC must provide the checklist network elements. Contrary to the claims of some commenters, ***TELRIC pricing for checklist network elements that have been removed from the list of section 251 UNEs is neither mandated by statute nor necessary to protect the public interest.*** Rather, Congress established a pricing standard under section 252 for network elements unbundled pursuant to section 251 *where impairment is found to exist.* Here, however, we are discussing the appropriate pricing standard for these network elements where there is no impairment. Under the no impairment scenario, section 271 requires these elements to be unbundled, but not using the statutorily mandated rate under section 252. As set forth below, ***we find that the appropriate inquiry for network elements required only under section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis – the standards set forth in sections 201 and 202.***[36] (Footnotes omitted; emphasis added.)

The Commission continues:

> . . . . . we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but ***does not require TELRIC pricing.*** This interpretation allows us to reconcile the interrelated terms of the Act ***so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.***[37] (Bold emphasis added.)

The Commission outlined the pricing of Section 271 elements as follows:

> Whether a particular checklist element's rate satisfies the just and reasonable pricing standard of section 201 and 202 is a fact-specific inquiry that the Commission will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, ***a BOC might satisfy this standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which***

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[35] *Triennial Review Order,* 18 FCC Rcd at 17383 ¶ 651.

[36] *Id.* at 17386 ¶ 656.

[37] *Id.* at 17387 ¶ 659.

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> ***it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.***[38] (Bold emphasis added.)

Thus, the Commission has clearly articulated a market-based standard -- not one based on forward looking cost -- for the pricing of Section 271 elements. There is no place for the use of TELRIC or its variants to determine if Section 271 element prices meet the just and reasonable standards embodied in Sections 201 and 202. And the Coalition has provided no basis to depart from this well-founded approach.

B. Non-Pricing Regulations

We will not dwell too much on the non-pricing regulations save to reiterate that these proposed regulations suffer from the same infirmities in regard to the pricing rules discussed above. Essentially, the Section 271 Coalition's transgressions in regard to its specific definitions [and regulations] can be encapsulated into an overarching, and intrinsically flawed effort to transform Section 271 checklist elements into a mirror of Section 251 elements (except without any of the restrictions in Section 251, as noted below). The allure of this to the Section 271 Coalition is obvious -- its members are trying to undo the delisting of UNEs and forbearance from UNE regulation such that they will continue reap the sustaining benefits that Section 251 unbundling provides. But this effort fundamentally misconstrues the relationship of Section 251 and Section 271. As the D.C. Circuit held in *USTA II*:

> § 271 checklist items four, five, six, and ten ***do not incorporate any of the specific requirements of § 251(c)(3), including the nondiscrimination prohibition specific to that section.*** Second, neither AT&T nor Verizon holds that the § 251(c)(3) nondiscrimination requirement mandates the combination rules the FCC promulgated under that section; rather, those cases found the nondiscrimination language in § 251(c)(3) ambiguous and deferred to the agency's reading of it. AT&T, 525 U.S. at 394-95; Verizon, 535 U.S. at 531-38. These holdings don't necessarily establish that a different rule would be

[38] *Id.* at 17389 ¶ 664.

> unreasonable. *Cf. Rust v. Sullivan*, 500 U.S. 173, 186-87, 114 L. Ed. 2d 233, 111 S. Ct. 1759 (1991). ***We agree with the Commission that none of the requirements of § 251(c)(3) applies to items four, five, six and ten on the § 271 competitive checklist.*** Of course, the independent unbundling under § 271 is presumably governed by the general nondiscrimination requirement of § 202.[39]

Congress did not intend for Section 271 to perpetuate the heightened regulatory mandates of Section 251. As noted earlier, Section 271 is a step on the deregulatory path. Once markets are opened, regulations are lessened -- not duplicated.

C. There Is No Basis to Lift Use Restrictions On UNEs

Perhaps the most quixotic effort of the Section 271 Coalition is its attempt to eliminate all use restrictions on Section 271 elements, including those denying access to UNEs by IXCs and mobile wireless providers. The Coalition asks that access Section 271 elements be literally unbounded. There is no basis in the statute or the Commission's local policies that would allow such unlimited sharing of ILEC networks. In particular, the Coalition's proposal completely disregards the substantial costs imposed by unbundling that both courts and the Commission have recognized.[40] The Commission, in its *Triennial Review Remand Order*, was unequivocal in its determination that such restrictions should be applied holding:

> In response to the court, we consider the state of competition in the mobile wireless services market and long distance services market in determining whether a requesting carrier may obtain access to a UNE solely to provide those services. Based on the record, the court's guidance, and the Commission's previous findings, we find that the mobile wireless services market and long distance services market are markets where competition has evolved without access to UNEs. We further find that whatever incremental benefits could be achieved under the Act by requiring mandatory unbundling in these service markets would be outweighed by the costs of requiring such unbundling.[41]

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[39] *USTA II*, 359 F.3d at 589-90.

[40] *See id.* at 563, 572, 576 and 579.

[41] *Triennial Review Remand Order*, 22 FCC Rcd at 2553-55 ¶ 36, n. 106-107 (footnotes omitted).

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The court the Commission referred to was the D.C. Circuit in *USTA II* which held that the Commission must consider ILEC tariffed alternatives to UNEs in making its impairment determination. In the context of the wireless market, the D.C. Circuit determined that the Commission could not "justify a finding of impairment with respect to wireless, where these different" "opportunities and risks" have obviously not made competitive entry uneconomic."[42] In response, the Commission noted the numerous occasions in which it has found both the wireless and IXC markets to be competitive.[43]

Once again, the Section 271 Coalition does not even go through the motions of contending that the intervening years have somehow rendered these markets non-competitive, because there is no way to root such an argument in the realities of the current interexchange and wireless markets. Given these findings, and the intervening growth in competition for wireline and wireless services, there is no justification for granting wireless carriers and IXCs access to Section 271 elements.

Not even three years ago, the Commission conducted extensive market analyses to ascertain if Qwest was entitled to forbearance from dominant carrier regulation if it provider interstate, interLATA service on an integrated basis. The Commission found:

> As our market analysis makes clear, we find that Qwest generally lacks classical market power in the provision of in-region, interstate, interLATA telecommunications services. We therefore find that Qwest will likely be unable to raise and maintain the prices of its in-region, interstate, interLATA telecommunications services above competitive levels. For the same reason, we find that Qwest will likely be unable to impose and maintain unjust or unreasonable practices, classifications, and regulations for these services. Faced with similar findings in the *LEC Classification Order*, the Commission concluded that, when carriers lack classical market power, the benefits of dominant carrier regulation are outweighed by its burdens. Consistent with this precedent, we find that classical market power concerns generally do not require that we apply

[42] *USTA II*, 359 F.3d at 576-77.

[43] *Triennial Review Remand Order*, 22 FCC Rcd at 2553-55 ¶ 36, n. 106-107.

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dominant carrier regulation to Qwest's provision of in-region, interstate, interLATA telecommunications services on an integrated basis.[44]

Not only did the Commission determine that Qwest lacked classical market power in the in-region, interstate, interLATA market it observed that there was significant excess capacity in said market which indicated that the competitive nature of the market would not wither anytime soon.[45] And given the Section 271 Coalition's emphasis on the anticompetitive impacts of local/long distance bundling by the RBOCs, it is worth nothing that one of the market segments the Commission devoted significant attention to was the bundled product market. Not only did this analysis not disrupt the Commission's finding of a competitive market, the statistics actually indicated that CLECs were reaping the benefit of the bundle even more than the BOCs were.[46]

Of course, competition in the wireless market continues to thrive as well.[47] It is clear that there is nothing that would, or should, lead this Commission to change its position on use

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[44] *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5233 ¶ 51 (2007) (footnotes omitted).

[45] *Id.* at 5228 ¶ 39 ("Finally, with respect to supply substitutability, we note that the Commission, in the *LEC Classification Order*, found that there was significant excess capacity for the provision of interstate interLATA telecommunications services, which would permit competitors to expand their output should a BOC attempt to raise the price of these services. Moreover, in the recent *BOC/IXC Orders*, the Commission reaffirmed its finding that the wholesale interexchange service market is competitive due to substantial excess capacity. There is no evidence in this record that would cause us to reevaluate this finding.") (footnotes omitted).

[46] *Id.* at 5219, n. 68 ("The Commission reports that as of December, 2005, 58 percent of regional BOC retail local consumer lines and 88 percent of competitive local exchange carrier (competitive LEC) lines were presubscribed to the local provider's long distance service, compared with 52 percent of regional BOC lines and 80 percent of competitive LEC lines as of June 2005. *See* Local Telephone Competition: Status as of December 31, 2005, at Table 6 (Industry Analysis and Technology Div., Wireline Comp. Bur. July 2006); Local Telephone Competition: Status as of June 30, 2005, at Table 6 (Industry Analysis and Technology Div., Wireline Comp. Bur. April 2006)").

[47] In its Thirteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, the Commission observed that "U.S. consumers continue to

restrictions on UNEs for IXCs and mobile wireless providers. In fact, each passing year provides more and more indication of the prudent determination the Commission made to apply those restrictions.

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benefit from effective competition in the CMRS marketplace" and that "during 2007, the CMRS industry experienced another year of strong growth, demonstrating the continuing demand for and reliance upon mobile services." Thirteenth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 08-27, DA 09-54, ¶ 274 (Jan. 16, 2009). Specific findings included:

- Approximately 99.6 percent of the total U.S. population, have one or more different operators (cellular, PCS, and/or SMR) offering mobile telephone service in the census blocks in which they live.
- More than 95 percent of the U.S. population lives in census blocks with at least three mobile telephone operators competing to offer service, and more than 60 percent of the population lives in census blocks with at least five competing operators.
- At the end of 2007, there were 263 million mobile telephone subscribers in the United States, up from 241.8 million at the end of 2006. The additional 21.2 million subscribers represent an increase of almost nine percent in 2007.
- The nationwide mobile penetration rate at year end 2007 rose to approximately 86 percent of the approximately 305.6 million people in the United States. Approximately 13.3 million wireless subscribers ported their phone number to another wireless carrier during 2007, about 30 percent higher than the 10.3 million subscribers who ported their phone numbers during 2006.

V. CONCLUSION

For the foregoing reasons, the Commission should summarily dismiss the Section 271 Coalition Petition.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By: /s/ Harisha J. Bastiampillai
Craig J. Brown
Harisha J. Bastiampillai
Suite 950
607 14th Street, N.W.
Washington, DC 20005
(303) 383-6671
Craig.Brown@qwest.com
Harisha.Bastiampillai@qwest.com

Its Attorneys

January 12, 2010

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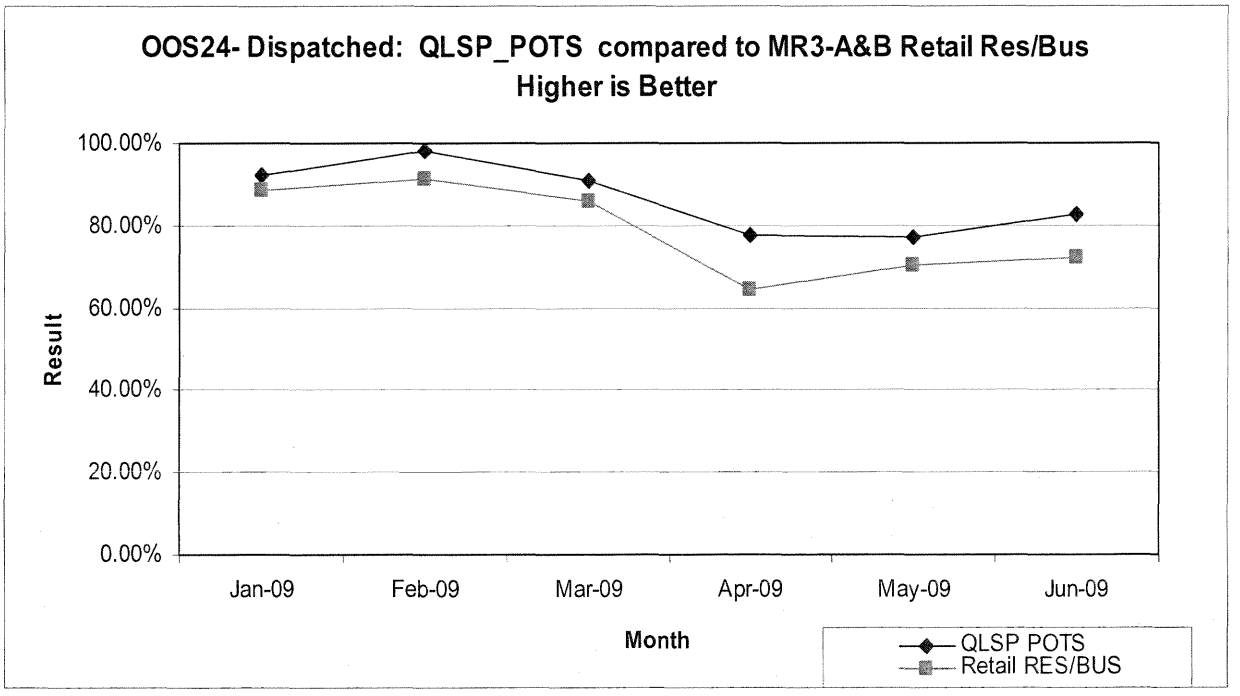
EXHIBIT A

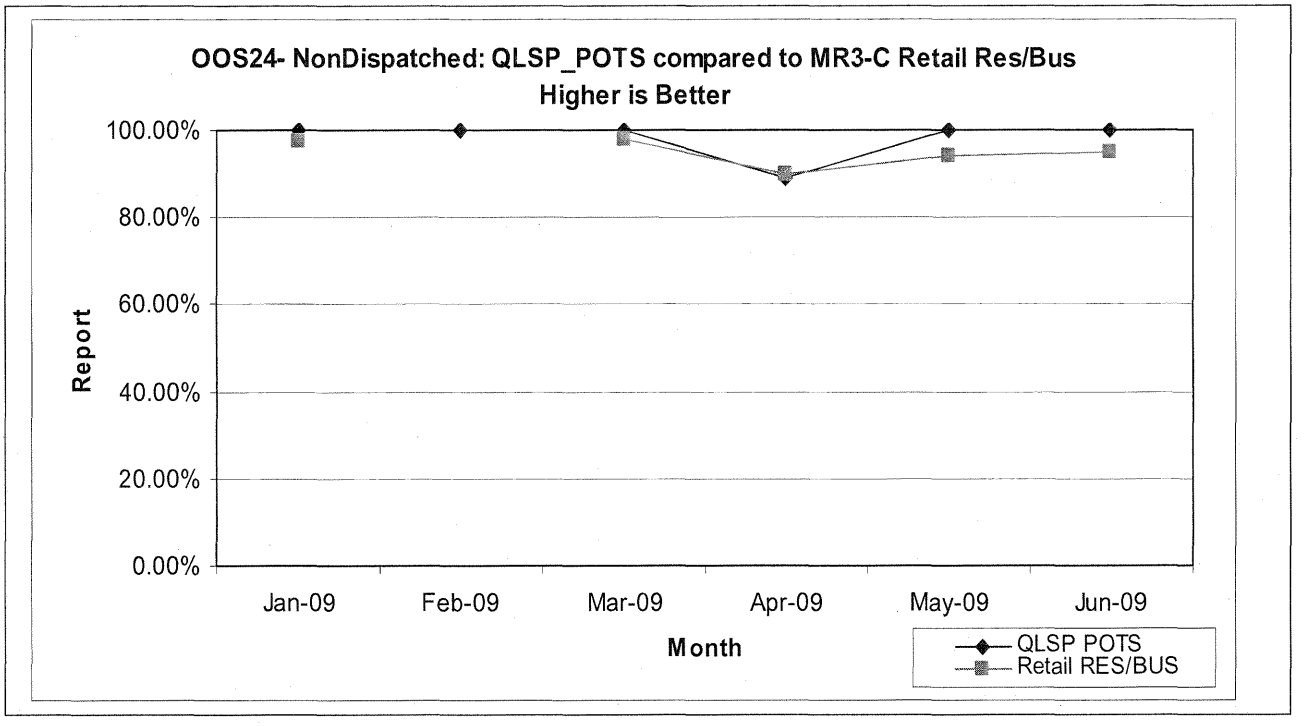
EXHIBIT A – Performance Results from Commercial Agreements

QLSP results for January through June 2009 clearly show that wholesale customers in commercial agreements are receiving higher quality service than comparable retail services.

QLSP Metric Results vs Retail Res/Bus Results
Jan – June 2009

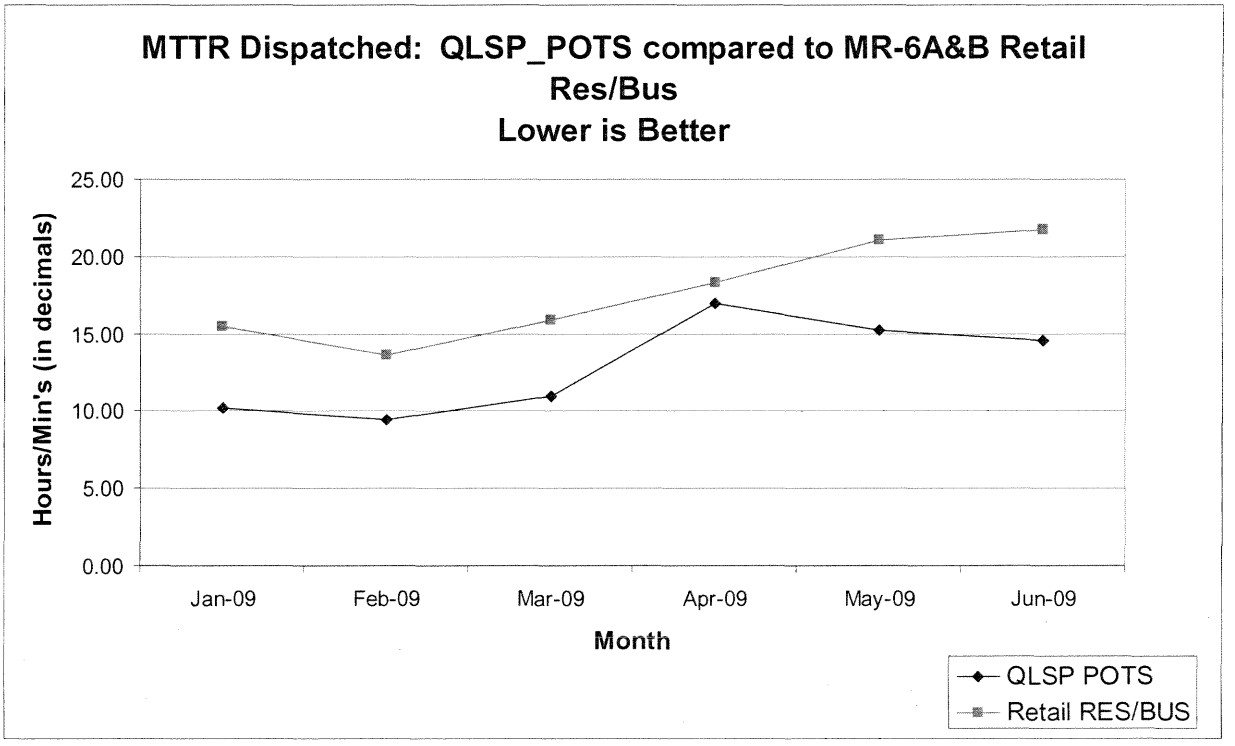
Out of Service Cleared within 24 Hours (OOS<24)

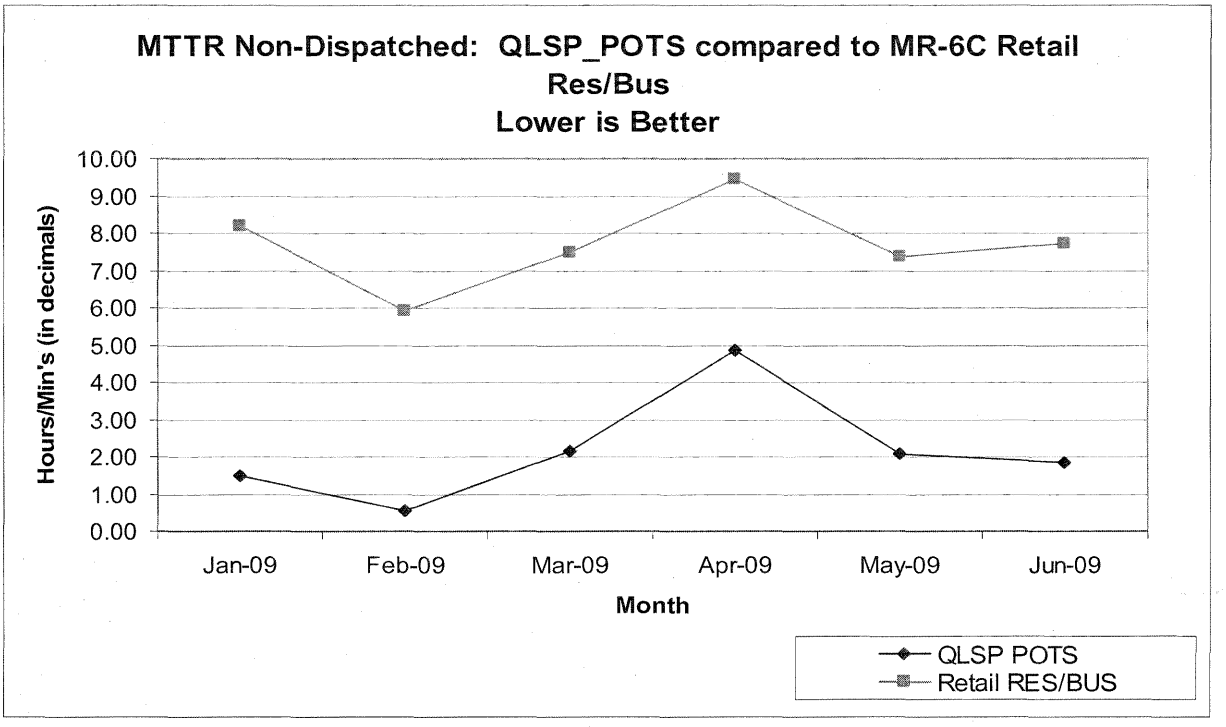




QLSP results for dispatched POTS services are better than the comparable combined MR-3A and MR-3B retail Res/Bus results. The same is true for the QLSP non-dispatched POTS results when compared to MR-3C results each month Jan – Jun 2009 – better or equal when the result is 100%

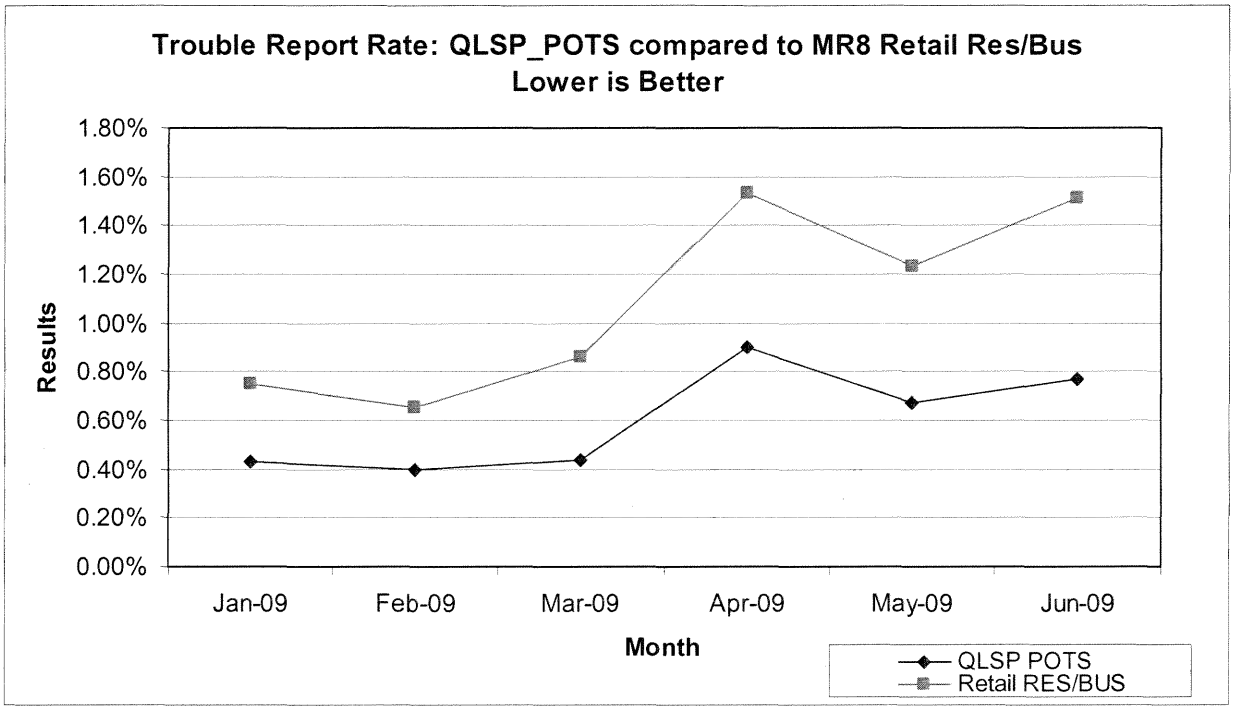
Mean Time to Restore (MTTR)





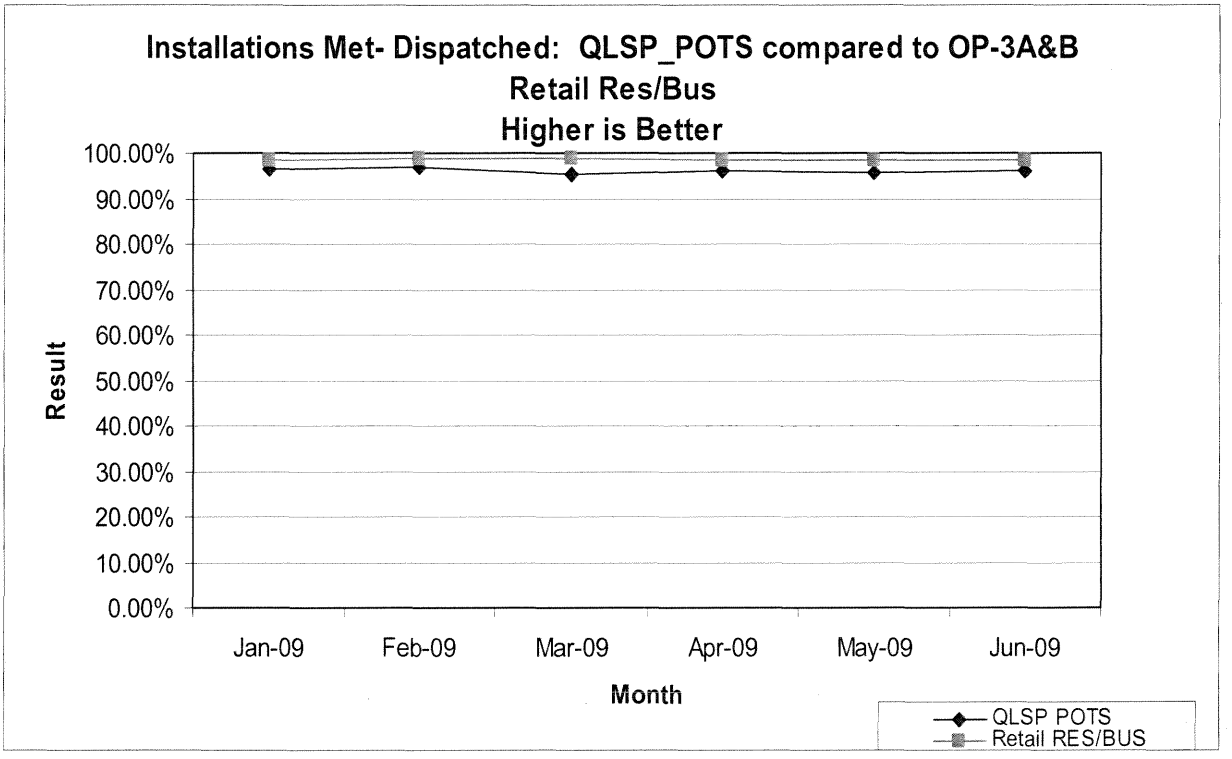
Dispatched QLSP-POTS MTTR results consistently range from two hours to six hours better when compared to the combined MR-6A & B retail Res/Bus results. Non-dispatched QLSP-POTS MTTR results range from four to eight hours better than MR-6C retail Res/Bus results.

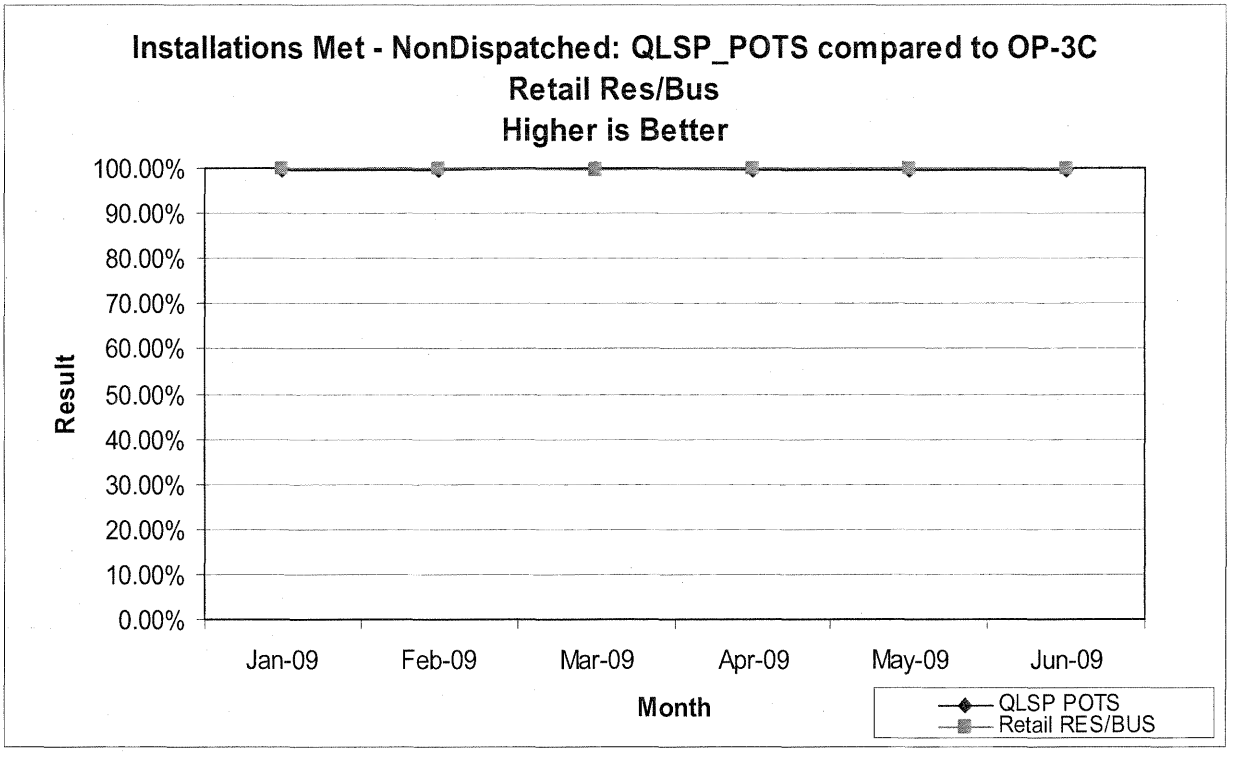
Trouble Report Rate



There were far fewer QLSP POTS trouble reports as a percent of total products than the comparable MR-8 retail Res/Bus result during the first six months of 2009

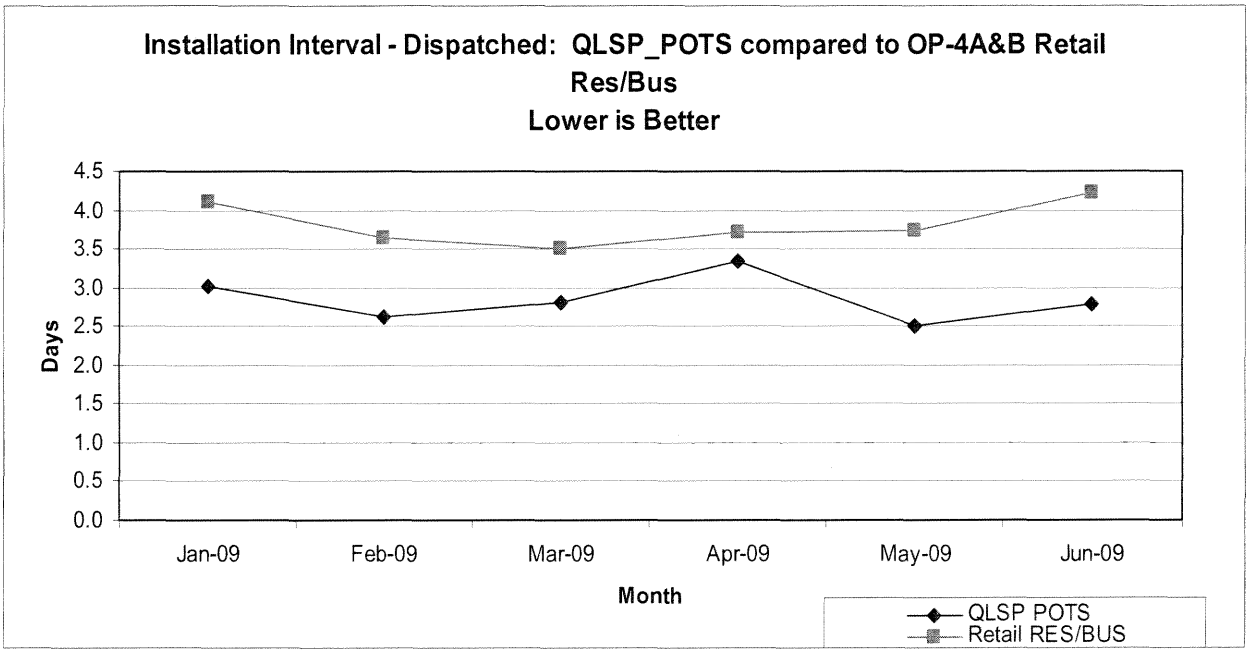
Installation Commitments Met

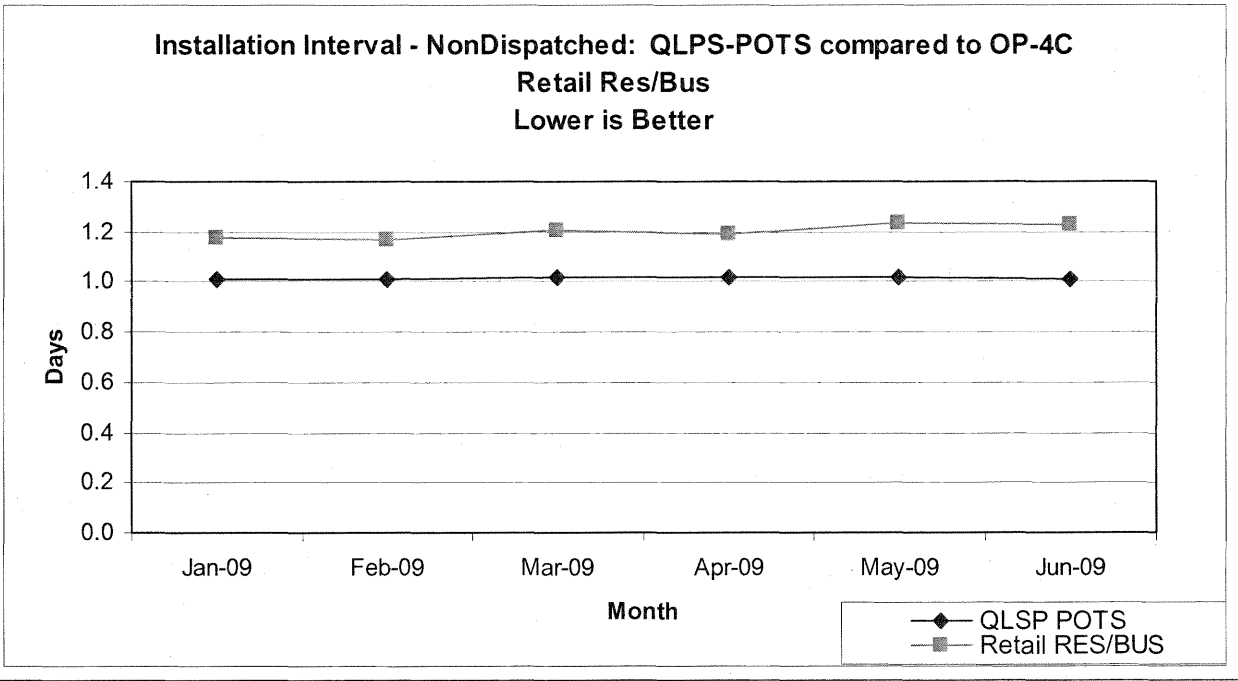




While the difference between the percent of dispatched QLSP POTS installation commitments met results and the OP-3A & B results are nearly equivalent for the first half of the year, the non-dispatched results for QLSP POTS and OP-3C are equivalent – at 100%.

Installation Interval





The QLSP POTS dispatched installation results range from a half day to nearly two days better when compared to the combined OP-4A & B retail Res/Bus results. Non-dispatched QLSP-POTS installation interval results are consistently about 20% faster than OP-4C retail Res/Bus results.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed (non-redacted) in hard copy with the Office of the Secretary of the FCC in WC Docket No. 09-222; 2) filed (redacted) with the FCC via its Electronic Comment Filing System in WC Docket No. 09-222; 3) served (redacted) via email on the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, at CPDcopies@fcc.gov; and 4) served (redacted) via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

January 12, 2010