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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Notice: *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135

Dear Ms. Dortch:

Cavalier Telephone, LLC ("Cavalier") submits this letter to explain the implications for itself and similar companies of forbearing from requiring incumbent LECs to provide unbundled local loops and transport, as requested by Qwest in this proceeding. As the filings in this docket make clear, granting forbearance from such unbundling would result in at best a duopoly, with unreasonable, discriminatory prices for both wholesale and retail customers. For this reason, Qwest's petition fails all three of the requirements for forbearance – Qwest has failed to show that enforcement of the targeted regulation "is not necessary to ensure that the charges, practices, [or] classifications . . . are just and reasonable and are not unjustly or unreasonably discriminatory"; that enforcement "is not necessary for the protection of consumers"; and that forbearance "is consistent with the public interest." 47 U.S.C. § 160(a).

Granting forbearance, moreover, fails to satisfy the public interest requirement for the additional, equally important reason that it will almost certainly drive providers such as Cavalier out of the market. Cavalier provides unique services that incumbent LECs and cable companies generally do not provide, and provides them to underserved, vulnerable individuals and institutions. As discussed below, granting LECs like Qwest forbearance from unbundling requirements likely makes it impossible for carriers like Cavalier to enter or remain in a market, because Cavalier relies on unbundled network elements for last-mile facilities. The loss of services that Cavalier provides to underserved, vulnerable customers – particularly during an economic downturn in which the Government is spending billions of dollars to provide broadband to these kinds of customers – is not in the public interest.

Over the last seven years, Cavalier has built or acquired network facilities in the mid-Atlantic region and elsewhere that represent more than $1 billion in assets. *See* Declaration of Sean Wainwright, submitted herewith ("Wainwright Decl."), ¶ 2. Although Cavalier owns many of its own facilities, it relies on incumbent LECs for access to the last mile. *Id.* ¶¶ 2, 9. Cavalier leases unbundled DS0 loops and, where necessary, local transport from the incumbent LEC. *Id.* ¶ 2. This model has proven a successful basis for providing innovative and valuable services to consumers. *Id.*

Cavalier's Network reaches more than 2 million businesses and 11 million residential prospects in 16 states and the District of Columbia. Nearly 8.7 million people have access to Cavalier's Hi-Speed Internet service. *Id.* ¶ 4. Cavalier provides a comprehensive suite of voice and data products to large, medium, and small businesses, including hospitals, fire departments, and schools, although the large majority of Cavalier's business customers are small and medium companies. Small businesses in particular benefit from Cavalier's high speed Internet service delivered over Cavalier's network using ADSL 2+ technology. Cavalier also provides 10mb Ethernet pipes, site–to-site private line service, and full Internet T1s. Cavalier's small office and home office business packages offer up to 20% savings on average based upon comparable service offerings from the applicable cable provider or incumbent LEC. *Id.*

Cavalier also serves residential customers in large numbers, offering them basic dial tone, long distance, dial-up Internet access, DSL, and IPTV. *Id.* ¶ 5. Many of Cavalier's services are specifically targeted to customers who might not otherwise have service, including poorer customers and those in neighborhoods where incumbent LECs are unlikely to upgrade facilities. For example, although Cavalier does not currently serve the Phoenix market, in the markets it does serve, Cavalier recently launched a prepaid landline phone service for less than one dollar per day, which can be purchased in blocks of 90-day intervals, with an option to purchase 6 or 12 months of service and receive one or two months free respectively. *Id*. In addition, Cavalier offers a value plan for $19.95 per month that provides unlimited local calling. Cavalier has also introduced two new phone and Internet bundles that include all fees in the price of the service to simplify billing, and eliminate the need for customers to understand the complexities of fees being added to their monthly statements. *Id.*

Moreover, Cavalier's overall prices are generally significantly lower than those of anyone else in the market. For example, in the markets it serves, Cavalier's price for local phone service with unlimited long distance and 12 calling features, including voicemail, is on average about $15-20 a month cheaper than either the applicable cable company or the incumbent LEC. Cavalier offers services like these without complicated promotional periods or contracts. *Id.*

Finally, many of the communities and individuals that Cavalier serves are those to which incumbent LECs are unlikely to devote significant resources. Cavalier has a significant number of customers in communities where the median household income is $20,000 or less and more than 35% live below the poverty line. Cavalier also serves many low-income and "Section 8" housing projects. And Cavalier serves customers with lower credit scores than do many other providers. *Id.* ¶ 6.

In short, most of Cavalier's customers do not have access to meaningful alternative providers. *Id.* ¶ 7. In addition, Cavalier is the only triple-play telecommunications alternative to Cox and Verizon for residential service in markets like Richmond and Virginia Beach. Unlike Verizon's FiOS service, Cavalier's service reaches older neighborhoods with copper facilities, so Cavalier provides service in the inner city, not just the suburban fringe. *Id.* ¶ 8.

Cavalier provides all of these services through a combination of unbundled network elements and its own facilities and equipment. Cavalier uses its own fiber facilities, but it must rely on unbundled network elements from incumbent LECs for last-mile facilities. *Id.* ¶ 9. There are no available alternatives to the network elements Cavalier leases from incumbent LECs at regulated rates, and that are essential for Cavalier to provide service. The incumbent LECs do not offer a special access wholesale offering that could reasonably substitute for the unbundled copper loops, or offer such a product only at commercially unreasonable rates. For example, although Verizon offers voice-grade loops as a special access service, it is at a much higher price than unbundled copper loops, and it is a voice-grade service only, meaning that Cavalier could not provide DSL, VoIP, or IPTV services. *Id.* ¶ 10. Based on incumbent LEC pricing for network elements that have been relieved of 251 unbundling requirements, it will not be economically viable for Cavalier to lease facilities from incumbent LECs where unbundling of DS0 loops is eliminated. And Cavalier is aware of no alternative providers of such facilities. *Id.*

Cavalier has concluded that where incumbent LECs are not required to unbundle local loops, Cavalier will not be able to serve that market. *Id.* ¶ 12. Cavalier will not enter new markets where such network elements are unavailable. If the Commission grants unbundling forbearance in markets served by Cavalier, Cavalier will likely sell its assets, or otherwise cease or limit its mass market operations in those markets. *Id.* For these reasons, as well as the other reasons explained in this docket, granting Qwest forbearance is not "consistent with the public interest." 47 U.S.C. § 160(a).

Sincerely,

/s/ Samuel L. Feder

Samuel L. Feder