

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenturyLink Petition for Forbearance)	WC Docket No. 14-9
Pursuant to 47 U.S.C. §160(c) from)	
Dominant Carrier Regulations and)	
Computer Inquiry Tariffing Requirements)	
on Enterprise Broadband Services)	
)	

**REPLY COMMENTS OF THE
ALARM INDUSTRY COMMUNICATIONS COMMITTEE**

The Alarm Industry Communications Committee (“AICC”), on behalf of its members, hereby files reply comments in response to the Commission’s Public Notice¹ in the above-captioned proceeding. Specifically, AICC supports the Commission’s proposal to use the traditional market power analysis applied in the *Phoenix Order*² and, further, take this opportunity to revisit the forbearance orders upon which CenturyLink relies.

AICC’s members³ collectively comprise the monitoring, installation, and manufacturing arms of the U.S. alarm security market. Many of these companies are small businesses who

¹ *Wireline Competition Bureau Seeks Comment on Appropriate Market Analysis for CenturyLink Enterprise Forbearance Petition*, DA 14-845, released June 20, 2014.

² *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, Memorandum Opinion and Order, 25 FCC Rcd 8622 (F.C.C. 2010) (*Phoenix Order*).

³ Central Station Alarm Association (CSAA), Electronic Security Association (ESA), Security Industry Association (SIA), Bosch Security Systems, Digital Monitoring Products, Digital Security Control, Telular Corp, Honeywell Security, Vector Security, Inc., ADT Security Services, AES-Intellinet, Alarm.com, Bay Alarm, Intertek Testing, NetOne, Inc. (formerly, Security Network of America), United Central Control, AFA Protective Systems, Vivint

purchase telecommunications services from CenturyLink and its affiliates. At the same time, alarm industry members compete with these and other carriers in the security marketplace. This dependence upon competitor facilities and services as a key business input naturally creates discriminatory incentives and ability with which the Commission has been concerned.

AICC therefore concurs with other commenters, and the Commission's June 20, 2014 Public Notice itself, supporting the traditional market analysis approach utilized in the *Phoenix Order*. AICC also submits that, given the *Phoenix Order*'s recognition that a duopoly was an insufficient basis for granting forbearance, the earlier Qwest broadband forbearance order should be revisited. These points are discussed in order.

The Phoenix Order Market Analysis Should Be Followed

As previously discussed, AICC submits that CenturyLink's Petition should not be measured against market conditions on a "national basis" as it contends.⁴ Rather, as Comptel and others argue, the more granular analysis conducted in the *Phoenix Order* is the better path.⁵ For instance, in the *Phoenix Order*, the Commission found that the broad, national look, which was the basis of the earlier forbearance petitions, led to unjustified economic conclusions.⁶ The Commission further found that its earlier approach resulted in the unjustified conclusion that a

(formerly APX Alarm), COPS Monitoring, DGA Security, Universal Atlantic Systems, Axis Communications, Interlogix, LogicMark, Napco Security, Alarm Detection, ADS Security, ASG Security, Security Networks, Select Security, Inovonics, Linear Corp., Numerex, Tyco Integrated Security, FM Approvals, Underwriters Laboratories, CRN Wireless, LLC and ipDatatel.

⁴ *CenturyLink's Petition for Forbearance Pursuant to 47 U.S.C. §160(c) from Dominant Carrier Regulation and Computer Inquiry Tariffing Requirements on Enterprise Broadband Services*, WC Docket No. 14-9, filed December 13, 2013, at p.23 (Petition).

⁵ *Comments of Comptel*, WC Docket No. 14-9, filed July 7, 2014.

⁶ *Phoenix Order* at ¶24.

duopoly constitutes effective competition in a manner that protects consumers.⁷ It also found that several predictive judgments based upon the earlier, flawed analysis, were not borne out by subsequent developments nor supported by economic theory.⁸

Against this background, AICC respectfully submits that CenturyLink's pre-*Phoenix Order* market analysis should be rejected. The alarm industry is most properly characterized as several thousand small businesses, the vast majority of whom operate only locally or regionally, but not nationally. Many of these companies do not have a choice for broadband facilities beyond the incumbent cable provider and, usually, a former regional Bell Company. Thus, the assessment of broadband competition at a national level hardly reflects real competitive conditions where these companies operate in local or regional, intra-state markets.

Unfortunately, CenturyLink's Petition contains no data as to these separate, geographic markets and thus fails to demonstrate the market factors required by the *Phoenix Order*.⁹ As discussed following, AICC respectfully submits that Qwest's earlier forbearance grant for packet-switched broadband services and its existing optical transmission services should be reexamined.

The Earlier Qwest Forbearance Should Be Revisited

CenturyLink's petition, in part, is grounded upon the argument that Qwest has earlier been granted dominant carrier and *Computer Inquiry* forbearance while CenturyLink is subject to closer regulation. Indeed, CenturyLink argues that, without such forbearance, it is stuck "in a

⁷ *Id.* at ¶¶25-29.

⁸ *Id.* at ¶24.

⁹ *Comments of tw telecom, Level 3, Integra, & Cbeyond*, WC Docket No. 14-9, filed July 7, 2014, at fn. 23.

time warp of 1990's regulation.”¹⁰ If anything, though, those earlier forbearance decisions (which include Qwest, AT&T and Verizon)¹¹ are themselves an anachronism of aberrant regulatory policy. These earlier forbearance decisions should be revisited. In fact, the Commission earlier noted that it may revisit such forbearance.¹²

Now is the time. The predictive judgments made by the Commission in its original Qwest forbearance have failed to pan out.¹³ Moreover, in the same order, the Commission noted that the market analysis used in the earlier Qwest forbearance order defined only a duopoly of service providers as an adequate substitute for regulation. It is noteworthy that, since the first Qwest broadband forbearance order, the Commission has similarly rejected an attempt by the former BOCs to eliminate Open Network Architecture Requirements for narrowband services based upon a similar failure to adequately address competitive alternatives.¹⁴ At the same time, such large carriers and/or their affiliates have entered the alarm security markets.

In sum, the earlier forbearance grants should be revisited. The earlier market power analysis was fatally flawed based upon the apparent assumption that a broadband duopoly is enough competition in enterprise markets. Moreover, subsequent events have proven wrong earlier optimism that pro-competitive conditions would improve enough to justify the forbearance. Finally, Commission policy now favors a much closer look at market conditions, including in enhanced service provider markets protected by Open Network Architecture Rules.

¹⁰ *Petition* at p. iv.

¹¹ *Petition* at pp. 1-14.

¹² *In re Qwest Petition for Forbearance Under 47 U.S.C. 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Servs.*, 23 FCC Rcd 12260, 12270 (F.C.C. 2008) at fn. 69.

¹³ *Phoenix Order* at ¶¶24-29.

¹⁴ *In re Petition of USTelecom for Forbearance et al.*, 28 FCC Rcd 7627, 7643 (FCC 2013).

These forbearance grants should be re-examined under the bright light of a market power analysis, consistent with the *Phoenix Order*.

Conclusion

For the forgoing reasons, the Commission should use the traditional market power analysis applied in the *Phoenix Order*. Furthermore, it should take this opportunity to review those forbearance orders upon which CenturyLink relies, as they were issued before the Commission's application of market power analysis in the *Phoenix Order*.

Respectfully submitted,

**ALARM INDUSTRY
COMMUNICATIONS COMMITTEE**



By: _____

Louis T. Fiore
Chairman

Filed: July 14, 2014