Minnesota Commissioners Meeting on 5/31/07 re Qwest Forbearance Petition

Docket No. CI-07-661

Executive Summary by Jerry Enright

The Minnesota PUC met and discussed Qwest's FCC pending forbearance filing for the Minneapolis/St. Paul MSA made at the FCC on 4/27/2007 at its 5/31/07 open meeting. Mark Oberlander had the Briefing Paper prepared by the Commission Staff that outlined the related issues and contained a summary of Qwest's petition and Staff's comments sent to us (MN summary notes). I will not repeat these as you hopefully have access to these in the document sent by Lillian Brion on 5/30/07 to the ROC-Staff list.

Minnesota Staff member Kevin O'Grady gave a brief presentation of the Qwest Petition and the associated forbearance standards. He noted that some of the data provided in Qwest's Omaha petition included confidential information. Also noted was the recent multi-state regulatory discussion that we had on 5/30/07 including the Colorado Staff notes that were shared. The question that he posed to the Commissioners is "Should the PUC get involved" in the comment process with the FCC.

Qwest's representative at the meeting, Jason Todd, gave an overview of the application. He explained why the filing was made for the 58 wire centers in the Minn/St.Paul MSA. He noted that the requested area included a significant number of its service territory in terms of customers. He went through the FCC 3-part test for forbearance provided by Kevin. Qwest has provided a substantial amount of data that he anticipates may be disputed by others related to the mass markets and the enterprise markets. He suggested that Comcast, the cable provider in the area was very aggressive and not dependent on the Qwest network. He also discussed VOIP, wire line CLECs and wireless substitution as competitive elements to be considered in the petition. Jason claimed that Qwest will have more incentives for providing new service offerings and that wholesale offerings will be provided at more rational pricing. Qwest states that it has provided enough hard data to justify its request and meet the first two parts of the FCC forbearance test (see MN summary notes).

Qwest addressed the third part of the FCC's forbearance test (consistent with the public interest) by claiming that the cost for unbundling its services is greater than the benefits of doing so. Jason stated that unbundling creates a disincentive to its competitors and that competitors have alternatives to Qwest to providing services to customers. Sharing facilities causes complex issues. He argued that there should be no unbundling requirements for Qwest and that due to available technology, parity of treatment (regulatory) should prevail. He also noted that Qwest has lost employees due to competitive pressure.

One of the Commissioners asked Jason of the impact that forbearance has made in Omaha on CLECs. Jason responded that competitors remain but that there will be claims made by McLeod that Qwest is unreasonable and that McLeod may exit the market. Qwest added that the question should be what the impact on customers is and that Qwest has an incentive to make reasonable offers to its wholesale customers.

The question of timing of comments on the petition, if they were to be made, came up in discussion. While it is not known when the FCC will request comments, it was suggested that a 90-day period with comments in 60 days and opportunity for reply comments in an additional 30 days may occur. The comment cycle would probably have a relatively short timeframe. Qwest suggested review of its provided data and interested parties to comment directly. Qwest would not recommend extensive PUC hearings due to the tight timeframe as it believes that it is not realistic. Jason stated that the FCC would probably be interested in the MN PUC's comments. In Omaha, the FCC segmented the MSA into wire centers for analysis and the apparent primary consideration for relief was the existence of cable facilities.

Qwest's presentation was followed by counterpoints from a Mr. Lipshultz (?) who represented multiple interests (Eschelon, McLeod, Covad, Integra, some business system integrators/consultants, XO and Popp Communications). Mr. Lipshultz started with responding to a Commissioner's question about how the limited time could be best spent and noting that the FCC may place little weight on MN PUC comments. Lipshultz stated that the CLECs will spend time where it is necessary as it is the last stand for competition in their view. He suggested that the MN Commission has expertise and is closer to the MN market and its consumers than the FCC (example of implementing the Telecom Act). He stated that MN law requires the PUC to promote competition and that forbearance as requested by Qwest may not further this mandate. He said that MN customers need to be protected, especially medium and small business customers. Lipshultz said that the Verizon petition for forbearance filed with the FCC had been opposed by six states. He suggested that Qwest provide the Commission what it had given to the FCC in its petition. He said that the CLECs will provide its information to the PUC, including reliance by them on Qwest for last mile facilities to provide their services.

Mr. Lipshultz stated that the nature and scope of Qwest's petition is exceedingly broad and that it sweeps away the last mile access to end users. Absent access at reasonable cost, the CLECs would not have the economies of scope for service provisioning. In Omaha, he claims that there are only two choices, Qwest and Cox Cable. McLeod may pull out of the Omaha market if forbearance completely approved. Lipshultz notes that forbearance will help Qwest but questions whether Qwest needs the help. He states that CLECs are looking at the impact in Omaha of forbearance and that consumers were hurt by reduced competition there. The FCC Omaha forbearance decision was challenged but upheld. For the existing petitions, there will be five FCC commissioners involved in the decisions to forbear. Lipshultz said that McLeod was used in error by the FCC in supporting the Omaha forbearance. He suggests that the Commission consider a three month timeframe for the PUC to prepare and submit comments to the FCC. If the deadline is missed, the opportunity to provide input though an ex parte filing was noted. He recommended an expedited process and proceedings with verified affidavits and that the CLECs were ready to move quickly.

Rick Smith from Eschelon followed with a presentation. He supports continued ILEC alternatives to customers in the form of CLECs. He stated that competition is still in the process of being created and that it is premature to forbear the dominant carrier. His main contention is that CLECs still need to go to Qwest for last mile access for a significant amount of traffic. He claims that Qwest has 60-70 % of the small and medium businesses as customers (5-100 employees). Without last mile access, he said, it cannot do business as the economics do not work. He went through the prices charged by Qwest in Omaha for DS-1 before and after with higher NRCs and recurring charges. While it is true he said that Qwest continues to provide services (under commercial agreements), it is very expensive and leaves CLECs with no choices. He claims that CLECs are not in competition with wireless carriers for its customers (medium/small business) and that Qwest will run the CLECs out of business with wholesale price increases. CLECs he states cannot duplicate the last mile of Qwest's network and they still need access at reasonable prices. He suggests that a CLEC needs a 30% market share to justify last mile investment of its own. He said that TDS and McLeod were serving residential customers until UNE-P was eliminated. He wants the MN PUC to stay involved in the forbearance petition and not to give up. He suggests looking at central offices that CLECs serve by business segment to see if there is benefit of competition. Forbearance may be good for some central offices.

An individual from McLeod followed the discussion. He said that in Omaha there is a resurgence of monopoly in the small/medium business market. In the residential market, it was more of a duopoly with Qwest and Cox. With prices increasing for CLECs they would be passed on to customers. While prices were previously decreasing for telecom services, prices will rise and innovation will be stifled. Large VOIP providers rely on CLEC for services but suggest price increases with incumbent provider. McLeod in Omaha is looking at selling its facilities and anticipating only getting $0.20 on every dollar invested in a sale. It plans to exit the market absent any change. He notes that they did not lose any of its customers to Cox with lost customers going to Qwest. Of importance is that Cox is not willing to provide wholesale services leaving Qwest as the only wholesale alternative.

Two system integrators followed the discussion by McLeod. The two individuals advocated for continued existence of alternatives to Qwest in the form of CLECs. These integrators have small/medium business customers and they put together telecommunications systems that rely on Qwest and CLECs for service. Noted that VOIP over a public network is not reasonable to consider due to security, service quality and reliability issues. Forbearance will increase CLEC costs that will be passes on to customers that already have a significant portion of their budgets related to telecom. Qwest has had to address competition from CLECs by improving its own service quality, to the benefit of these customers. Comcast does not yet have a developed product for multi-line business (>2 lines) so is not yet a viable alternative to business customers. The cost of construction by CLECs of the last mile to customers is prohibitive. Competition that has been created may disappear with forbearance granted to Qwest. Support for last mile access for CLECs was made. A third business integrator said that he uses Qwest for his services and they are easier to work with than with Qwest. He stated that the MN PUC is closer to the MN markets than is the FCC and supported the notion that cable shared bandwidth is not what business customers want and that rates will increase if forbearance is approved. He claims that innovation will be reduced and that service quality needs to be maintained and that forbearance will not help competition. Endorsed continued PUC involvement for system integrators and CLECs since less competition is not a benefit.

Following lunch break there was a bit of interaction between the participants. It was noted that the FCC must consider if forbearance will promote competition. CLECs added that one provider of wholesale service does not make a market (in response to claim that TELRIC rates were too low). TRO/TRRO already exists for wholesale regulatory relief for Qwest and that MN state law allows for retail relief (AFOR) but there is still a reliance on last mile facilities for small/medium business provisioning.

Concern was expressed by two Commissioners on how to proceed on building a record. Dianne Wells of MN staff suggested building a record and submitting the information gathered to the FCC with a PUC proceeding to start the process as necessary. The CLECs support a proceeding to gather information for PUC analysis. Qwest stated that the CLECs and others that commented wanted to preserve the status quo and TELRIC prices. Noted that it would be difficult in getting a complete record and that some of the competitors were not subject to the Commission's jurisdiction. Qwest anticipates self-serving presentations and incomplete analysis. The question should be whether forbearance knocks out competition and hurt consumers. Qwest suggests that the MN Commission should provide comments but that they should be well grounded on information and not based on special interests.

There was apparently a CLEC document prepared but Qwest and some others had not received this (maybe we can obtain from MN Staff?).

The Commissions had a brief discussion and with the assistance of Mark Oberlander decided to use the existing docket (07-661) for opening a comment period. The docket should receive from Qwest what it has provided in its forbearance filing to the FCC and a prepared list of issues to be addressed by parties (to be prepared by MN staff). Mark added that the process should have the ability to be accelerated in the event it is necessary.