Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Petition of Qwest Corporation for Forbearance	)	WC Docket No. ___________
Pursuant to 47 U.S.C. § 160(c) in the Denver,	)	
Colorado Metropolitan Statistical Area	)	

PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)

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REDACTED – FOR PUBLIC INSPECTION

TABLE OF CONTENTS

REDACTED – FOR PUBLIC INSPECTION

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I. INTRODUCTION AND SUMMARY

Qwest Corporation ("Qwest") seeks forbearance from significant, burdensome regulation, particularly loop and transport unbundling and dominant carrier regulation throughout the Denver Metropolitan Statistical Area ("MSA"), where Qwest faces competition from a wide range of technologies and a broad array of service providers. Multiple competitive alternatives are available to mass market and enterprise customers alike. This competition includes wireline and cable-based services. Moreover, intermodal competition, particularly from wireless and Voice over Internet Protocol ("VoIP") providers is more advanced than it was in Omaha, Nebraska in mid-2005, when the Federal Communications Commission ("Commission") voted on the *Omaha Order*.[1]

Mass market consumers throughout the Denver MSA now have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha the most significant provider of competitive voice services in the Denver MSA is a cable company, in this case Comcast. Based upon publicly available information, Comcast currently appears to

[1] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Order*" or "*Omaha Forbearance Order*"), *aff'd sub nom.*, *Qwest Corp. v. FCC*, Nos. 05-1450, *et al.* (D.C. Cir. Mar. 23, 2007).

offer voice services even more widely in Denver than Cox did in Omaha in 2005. Other types of mass market competition are also more advanced in Denver now than they were in Omaha two years ago. Each of the nation's major wireless carriers serves the entire Denver MSA, offering service that is competitive with Qwest's wireline services. Consumers in the Denver MSA have shown an increasing propensity to "cut the cord" -- replacing their wireline service with wireless service. In addition, any consumer with a broadband connection (*e.g.*, cable modem, Digital Subscriber Line ("DSL"), wireless) can also obtain telephone service from several dozen "over-the-top" VoIP providers,[2] which can be accessed over competitive wireline, cable and wireless networks. Qwest also continues to face competition from traditional competitive local exchange carriers ("CLECs"), including carriers that obtain wholesale service from Qwest, which the Commission in the *Omaha Forbearance Order* deemed relevant to forbearance inquiries such as this one.

These various competitive alternatives are widely used by consumers in the Denver MSA. Between 2000 and 2006, Qwest's retail residential mass market switched access lines in the Denver MSA declined by [redacted] percent, even though the number of households in the MSA increased by approximately 13 percent during this time.

There is likewise intense competition for enterprise business services in the Denver MSA. There are numerous competitors vying for business customers, and there are approximately 20 competitive fiber providers that operate networks in areas where enterprise customers are concentrated in the Denver MSA, including wire centers that account for [redacted] percent of Qwest's retail switched business lines in the MSA. In addition, as the

[2] "Over-the-top" VoIP providers are those that offer VoIP as an incremental, stand-alone service on top of an existing broadband Internet connection (*e.g.*, Vonage), as opposed to providers of integrated VoIP telephone services offered by carriers such as cable television service providers.

Commission has found, cable companies are capable of using their cable networks to serve enterprise customers. As was the case with Cox in Omaha, Comcast is actively marketing its services to small business, large enterprise, and government customers.

These competitive alternatives are widely used among enterprise customers in the Denver MSA. Since 2000, Qwest's business lines in the Denver MSA declined by approximately [redacted] percent, even though the business segment grew overall. Moreover, these declines took place on top of the inroads that competitors made prior to 2000.

In this competitive environment, imposing regulation crafted in and for an earlier era is unnecessary and counterproductive.

II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE FACT THAT TELECOMMUNICATIONS COMPETITION IN THE DENVER MSA IS ROBUST AND RAPIDLY GROWING

Qwest asks that the Commission forbear from applying loop and transport unbundling regulation pursuant to 47 U.S.C. §§ 251(c) and 271(c)(2)(B)(ii), *see* 47 C.F.R. § 51.319 (a), (b) and (e). For mass market and enterprise services, Qwest also seeks forbearance from the dominant carrier tariff requirements set forth in Part 61 of the Commission's rules,[3] from price cap regulations set forth in Part 61 of the Commission's rules,[4] from the Computer III requirements including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements, and from dominant carrier requirements arising under Section 214 of the Act and Part 63 of the Commission's rules concerning the process for acquiring lines, discontinuing services, making assignments or transfers of control.[5]

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[3] 47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59.

[4] 47 C.F.R. §§ 61.41-61.49.

[5] 47 C.F.R. §§ 63.03, 63.04, 63.60-63.66.

The Commission must forbear from regulating where the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a). In making the public interest determination the Commission may weigh the competitive effect of forbearance. "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest." 47 U.S.C. § 160(b).[6]

In Omaha, where the Commission has already granted similar relief, consistent with the Commission's predictive judgment, Qwest is continuing to grant competitors wholesale access to its loop and transport facilities. Qwest's motivation is to sell as much service as possible, while making a reasonable profit. Thus, Qwest is committed to its wholesale customers as a distribution channel. In Omaha, as in virtually every instance in which Qwest has received regulatory relief, Qwest has voluntarily made available commercial products to replace the products that had previously been mandated by regulation. Accordingly, after the Commission issued the *Omaha Forbearance Order*, Qwest reached agreement to provide loops and transport to a number of CLECs in the Omaha MSA. If the Commission were to grant this forbearance

[6] The Commission may not forbear from the requirements of Sections 251(c) or 271 until those requirements have been fully implemented. 47 U.S.C. § 160(d). The Commission has previously determined that Section 251(c) has been "'fully implemented' for all incumbent LECs nationwide." *Omaha Forbearance Order*, 20 FCC Rcd at 19439-40 ¶¶ 51-53.

petition, Qwest would similarly continue to make loops and transport available on a commercial basis in Denver.

The Denver MSA is one of the most competitive areas within Qwest's 14-state region. Many carriers now actively compete in that market. In each of Qwest's 43 wire centers in the Denver MSA,[7] customers now have the choice of at least one, and often many more, alternatives to Qwest's retail telecommunications services. This collection of competitors ranges from a cable-based service provider, to traditional wireline CLECs, to wireless (narrowband and broadband) providers, to VoIP providers. As one would expect given this wide range of options, Qwest has experienced significant access line loss in the Denver MSA and greatly reduced market share.

A. Mass Market Consumers Have Access to a Wide Range of Competitive Alternatives

Mass market consumers throughout the Denver MSA now have access to a wide range of competitive alternatives for affordable local telephone service. "In prior proceedings, the Commission has defined mass market customers as residential and small business customers that purchase standardized offerings of communications services."[8] Consistent with the Commission's earlier findings, Qwest faces competition from a variety of providers of retail mass market services. These competitors include a cable service provider (currently providing both circuit switched and VoIP-based services), wireline CLECs, wireless carriers, and over-the-top VoIP providers.[9] Moreover, there are non-unbundled network element ("UNE") wholesale

[7] Highly Confidential Exhibit 2 lists Qwest's Denver MSA wire centers by name.

[8] *See 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, WC Docket No. 05-333, FCC 07-13, rel. Mar. 9, 2007 at n.56 ("*Sunset Order*").

[9] *See id.* ¶ 29.

alternatives available to CLECs, including wholesale services offered by other CLECs. As the Commission found in the *Sunset Order,* intermodal competition between wireline service and services provided on alternative service platforms, including VoIP and wireless, has been increasing and is likely to continue to increase.[10] Comcast is the leading competitor in Denver. Traditional CLECs, including carriers that obtain wholesale service from Qwest, provide additional competition. Moreover, any consumer with a broadband connection (*e.g.*, cable modem, DSL, wireless) can obtain telephone service from literally dozens of "stand-alone" VoIP providers, which can be accessed over competitive networks. Throughout the Denver MSA, these competitors offer voice services that are competitive with Qwest's service offerings and are comparably priced. As demonstrated below, in addition to being widely available, each of these competitive alternatives are also widely used by consumers in the Denver MSA.

1. Cable

The most prevalent source of competition in the Denver MSA is Comcast, which offers nearly ubiquitous[11] facilities-based alternatives to Qwest's service. Comcast aggressively markets its Comcast Digital Voice (or "CDV") facilities-based VoIP service in the Denver MSA, but still serves some customers with its functionally equivalent circuit-switched telephony offering. Brigham and Teitzel Declaration, Exhibit 1, p.20. Moreover, the Commission in its recent *AT&T/BellSouth Merger Order* found that "facilities-based VoIP services clearly fall within the relevant service market for local services. Facilities-based VoIP services have many

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[10] *See id.* ¶ 20.

[11] Qwest bases the claim that Comcast's telephony offering is nearly ubiquitous on Comcast's Denver, Colorado coverage map, which is found at pages 1 and 2 of Exhibit 1 to the Brigham and Teitzel Declaration. This is the only publicly available information regarding the extent of Comcast's coverage in the Denver MSA. According to a Comcast presentation to the Colorado Office of Consumer Counsel Comcast's Digital Voice service is available to virtually all of the homes it passes. Brigham and Teitzel Declaration, n.28 and Exhibit 1, p.6.

REDACTED – FOR PUBLIC INSPECTION

similar characteristics to traditional wireline local service. There is also significant evidence indicating that mass market subscription to cable-based VoIP continues to increase nationwide as cable operators continue to roll out these services throughout their footprints."[12]

In the *Omaha Forbearance Order*, the Commission held that Cox's voice services "compete as substitutes for Qwest's wireline telecommunications service offerings."[13] The same is true of Comcast's services in Denver, where as of December 2006, Comcast was serving a geographic area encompassing Qwest wire centers that account for approximately [redacted] of the Qwest retail residential lines in that MSA. Brigham and Teitzel Declaration ¶ 13 and Exhibit 1, pages 1 and 2.

Comcast has invested more than $400 million to improve its Denver-area network in preparation for anticipated growth. Brigham and Teitzel Declaration ¶ 15. Moreover, Comcast announced in 2006 that it would be creating more than 700 new jobs in Colorado to "keep pace with the increasing popularity of its bundled package of cable TV, high-speed Internet and digital voice service." *Id.*

Comcast is competing aggressively based upon price. It offers VoIP-based Comcast Digital Voice service, which includes unlimited local and long distance calling, including free calls to Canada, and 12 standard calling features. *Id.* ¶ 17. This service is priced at $39.95 per month for residential customers already subscribing to cable and high speed Internet service.[14] New customers can purchase a bundle of cable, high speed Internet and CDV for $99.00 per

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[12] *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, FCC 06-189, rel. Mar. 26, 2007 ¶ 93 ("*AT&T/BellSouth Merger Order*"), *pet. for rev. withdrawn,* Order, No. 07-1009 (D.C. Cir. Apr. 3, 2007).

[13] *Omaha Forbearance Order*, 20 FCC Rcd at 19447 ¶ 65; *see id.* at 19432 ¶ 33.

[14] Residential customers taking only one of those services must pay $44.95 a month. If the customer wishes to subscribe only to CDV service, the rate is $54.95. *Id.*

month for 12 months and Comcast has offered some Denver MSA customers a limited time promotional CDV rate of $19.99 per month for six months. *Id.* ¶ 17. Customers appear to be responding favorably. Comcast has reported that CDV is driving the adoption of other products, with 80% of CDV customers also purchasing cable and high speed Internet. *Id.* ¶ 16

Understanding that customers prefer one-stop shopping for communications services, Comcast is involved in a joint venture with Sprint Nextel Corporation ("Sprint Nextel") to provide integrated mobile phone service to its cable customers. Brigham and Teitzel Declaration ¶ 19. Comcast began offering these wireless services in Boston and Portland in 2006, and plans to expand to other areas in 2007. *Id.* Comcast has not yet announced the launch date for the Denver MSA. *Id.* This arrangement will enable Comcast to offer the "quadruple play" bundle of video, broadband Internet access, digital telephone and wireless service. *Id.* Comcast expects to use mobility as a means of adding value to its customer base, using wireless to tie its services together. *Id.* Comcast plans to allow customers to access e-mail, cable TV guide and home voice mail from their cell phones. *Id.* Moreover, Comcast will allow consumers to access video content, and eventually program DVRs, remotely from their cell phone handsets. *Id.* Industry analysts expect incumbent local exchange carrier ("ILEC") access line losses to cable telephone providers to continue in light of cable's multi-service bundles. *Id.* ¶ 20.

In sum, Comcast has extensive facilities in the Denver MSA capable of delivering mass market services. *See Omaha Forbearance Order*[15] (finding that such facilities demonstrate that supply elasticity is high). Comcast has been "successfully providing local exchange and exchange access services . . . without relying on Qwest's loops or transport."[16] Thus, as the Commission held in the *Omaha Forbearance Order*, this competition is, standing alone,

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[15] *See Omaha Forbearance Order,* 20 FCC Rcd at 19448 ¶ 66; *see id.* at 19432-33 ¶¶ 35-36.

[16] *Id.* at 19447 ¶ 64.

"sufficient to justify forbearance" from loop and transport unbundling regulations,[17] and from dominant carrier regulation of switched access service.[18] (Comcast's extensive facilities build-out in the Denver MSA, and growing success in luring Qwest's mass market customers, indicates that the first factor is easily satisfied for switched access services.)[19]

2. Wireline CLECs

In addition to Comcast, over [redacted] unaffiliated CLECs are currently competing with Qwest within the Denver MSA. Brigham and Teitzel Declaration ¶ 21. Of this number, [redacted] CLECs are using non-Qwest network facilities to provide service, [redacted] are using the Qwest Platform Plus ("QPP")[20] finished wholesale service and [redacted] are reselling Qwest retail services.[21] *Id.* ¶ 21. CLECs are utilizing Qwest resale or QPP/QLSP[22] wholesale services to compete with Qwest in every Qwest wire center in the Denver MSA. Brigham and Teitzel Highly Confidential Exhibit 2.[23] Qwest estimates that CLECs competing through QPP/QLSP

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[17] *Id.* at 19450-51 ¶ 69.

[18] *Id.* at 19432-33 ¶ 36.

[19] *See id.*

[20] Qwest recently replaced QPP with a new product, the Qwest Local Service Platform ("QLSP"). During the time periods for which data is presented in this petition, QPP was the relevant product. With the exception of Omaha, where Qwest is no longer required to provide unbundled loops at TELRIC rates, QPP/QLSP relies upon an unbundled loop. In Omaha, Qwest includes terms and conditions for unbundled loops in the QPP/QLSP agreement, and has not to date raised its unbundled loop prices when purchased as part of QPP/QLSP.

[21] Qwest wholesale tracking systems, December 2006. Some of the CLECs are serving end users via more than one platform (*e.g.*, a CLEC may use both resale and QPP/QLSP to serve its customers). Therefore, one cannot add the number of CLECs using each platform in order to determine the total number of CLECs.

[22] Even though QPP/QLSP includes unbundled loops, as described above in footnote 19 in connection with Qwest's practices in Omaha, QPP/QLSP will remain available to CLECs should the Commission grant forbearance.

[23] Highly Confidential Exhibit 2 shows the distribution of Qwest wholesale services, including UNEs, purchased by CLECs as of December 2006 in each Qwest wire center, segmented by residential and business line categories. Since Qwest has no means of determining the type of

and Resale are providing approximately [redacted] residence lines. *Id.* Highly Confidential Exhibit 2. This does not take into account any CLECs competing via Special Access services, nor those serving customers via CLEC-owned switches and loops.

To the extent CLECs are utilizing their own networks to serve residential customers in the Denver MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs which are "facilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 75% of Qwest's residential lines are listed in the white pages directories. Brigham and Teitzel Declaration n.66. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] residential lines associated with facilities-based CLECs in the rate centers in the Denver MSA. *Id.* ¶ 23.

3. Wireless

Wireless use in Colorado is extensive. According to the Commission's most recent data, there were 3.442 million wireless subscribers in Colorado as of the end of June 2006. Brigham and Teitzel Declaration ¶ 36. By comparison, as of the same date, ILECs and CLECs jointly

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retail service for which CLECs are utilizing stand-alone UNE-L and enhanced extended loop ("EEL") services, these wholesale services are attributed to the "business" category in this summary. It is important to note that the information shown in Highly Confidential Exhibit 2 *excludes* any data associated with access lines served via: (1) CLEC-owned network facilities; (2) Special Access service purchased from Qwest; or (3) network facilities leased from non-Qwest providers. It therefore represents only a subset of CLEC lines in service in the Denver MSA. Brigham and Teitzel Declaration ¶ 22.

reported servicing approximately 2.085 million wireline access lines. *Id.* Thus, wireless subscribers in Colorado exceed the combined total of ILEC and CLEC wireline access lines in the state by a wide margin. *Id.* Moreover, from June 2000 to June 2006, the number of Colorado wireless subscribers grew exponentially (by approximately 108 percent), while the number of wireline access lines has declined. *Id.* Qwest also faces competition in the Denver MSA from multiple wireless providers. Mass market customers are increasingly using wireless services in place of traditional wireline telephone services.[24]

As demonstrated in the map attached as Exhibit 5, p.7 to the Brigham and Teitzel Declaration, various major carriers such as Sprint PCS, T-Mobile, Verizon, Cricket and AT&T (formerly known as Cingular) all offer telephone services in the Denver MSA, and competitive wireless service from at least one of these carriers is available throughout the Denver MSA. Brigham and Teitzel Declaration ¶ 39 and Exhibit 5. In addition, other smaller wireless carriers, such as Alltel, also serve the Denver MSA. *Id.* ¶ 39 and n.117. Each of these carriers offers packages of services that are comparable to and competitive with Qwest's wireline service offerings.

It is important to note that a significant number of Denver residents are now "cutting the cord"[25] more readily than in most other parts of the country. In fact, 11.3 percent of Denver area respondents to a recent survey reported that they are relying upon wireless services for all of their communication needs. Brigham and Teitzel Declaration ¶ 38. That translates to over 119,000 Denver area households that use wireless services instead of wireline. *Id.* This total excludes customers who have elected to remove an additional line in favor of wireless service or

[24] *See generally Sunset Order* ¶ 17 and n.61.

[25] Customers that have "cut the cord" have disconnected wireline telephone service and rely exclusively on wireless service for their voice telecommunications needs. Brigham and Teitzel Declaration ¶ 37.

who have shifted a significant amount of usage from their landline to their wireless telephones. *Id.* In contrast to Denver's 11.3 percent rate for cord-cutting reported in the study referenced above, the reported national average proportion of households with only wireless phones was 9.6% in June 2006.[26] *Id.* ¶ 37.

In many instances, even if they do not "cut the cord" subscribers will remove a second landline in favor of wireless service and/or shift a significant amount of telephone usage to wireless service. In each of these instances, demand for Qwest wireline telephone service is reduced, even though the customers have not disconnected their wireline telephone service entirely. The Commission states:

> Even when not "cutting the cord" completely, consumers appear increasingly to choose wireless service over traditional wireline service, particularly for certain uses. For example, according to one analyst, customers in nearly a third of American households make at least half their long distance calls at home from their cell phones rather than from their landlines. In the early 2006 survey of cell phone users described above, an additional 42 percent of cell phone users said that they also had a landline phone, but that they used their cell phones "most."[27]

Wireless service subscribers are undeniably using wireless service as a direct substitute for traditional wireline telephone services. In this context, it is not surprising that the Yankee Group reports that "more than 51% of local calls and 68% of long distance calls have been replaced by wireless." Brigham and Teitzel Declaration ¶ 38.

The Commission's analysis of the extent of competition between wireless and wireline services conducted in connection with the AT&T/BellSouth merger supports including wireless services in the forbearance analysis. In the *AT&T/BellSouth Merger Order*, the Commission recognized that "growing numbers of subscribers in particular segments of the mass market are

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[26] http://www.cdc.gov/nchs/products/pubs/pubd/hestats/wireless2006/wireless2006.htm. *See* Brigham and Teitzel Declaration Exhibit 5, p.1.

[27] Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Tenth Report, September 29, 2006, p.90 ¶ 206.

choosing mobile wireless service instead of wireline local services"; that "approximately 6 percent of households have chosen to rely upon mobile wireless service for all of their communications needs"; that certain wireless carriers such as Sprint Nextel "would likely take actions that would increase intermodal competition between wireline and mobile wireless services"; and that "intermodal competition between mobile wireless and wireline service will likely increase in the near term."[28] The Commission also recognized that "even if most segments of the mass market are unlikely to rely upon mobile wireless services instead of wireline local services today," in order for wireless service to constrain prices for wireline service the analysis "only requires that there be evidence of sufficient substitution for significant segments of the mass market."[29] The Commission accordingly concluded that "mobile wireless services should be included within the product market for local services to the extent that customers rely on wireless service as a complete substitute for . . . wireline service."[30]

Significantly, the Commission's conclusions with respect to wireless were not confined or unique to any particular geographic market but instead applied generally to all relevant geographic markets. The Commission also recognized that it was not necessary to evaluate competition on a granular geographic basis and that a state-level analysis was reasonable.[31] Although the Commission reached these conclusions in the context of analyzing a merger, the purpose of that analysis -- determining the extent of mass market competition -- is identical to the one here, and the Commission's conclusions should therefore hold the same weight here as they did in that context.

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[28] *AT&T/BellSouth Merger Order* ¶ 96.

[29] *Id.*

[30] *Id.*

[31] *See id.* ¶ 104.

Evidence shows that, particularly in the Denver MSA, wireless service is another form of facilities-based competition. Wireless both taken alone, and particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers. Data indicate that customers would have a viable alternative should Qwest attempt to raise its wireline prices. Moreover, Qwest's extremely limited presence as a wireless service provider, strongly suggests that if the price of wireline service went up, few of Qwest's customers would switch to a Qwest wireless service.[32] Wireless competition accordingly protects against wireline price increases in the first instance.

4. Over-the-Top VoIP Providers

Industry experts forecast exponential VoIP growth through at least 2010. For example, Frost and Sullivan found that VoIP market revenue totaled $295.1 million in 2004 and expect it to reach $4,076.7 million in 2010, **a growth rate of over 1,200%**. Brigham and Teitzel Declaration ¶ 48. Additionally, the Yankee Group reported that roughly 44% of all U.S. households now subscribe to broadband Internet access. This percentage is expected to reach 58 by 2010. *Id.*

Since VoIP calls do not rely on Qwest's switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest's local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. These competitive networks are not limited to competitive wireline broadband services, but also include cable and wireless services. According to the Commission, broadband access lines in Colorado have grown from 61,408 in June 2000 to 1,165,853 in June 2006 -- an increase of almost 1,800%. Brigham and Teitzel Declaration ¶ 44. In fact, in just the first six months of

[32] *See Sunset Order* ¶ 34. Qwest Wireless has [redacted] share of the consumer wireless market in the Denver MSA. Brigham and Teitzel Declaration n.18.

2006 alone, broadband access lines in Colorado increased by 32%. *Id.* As of June 2006, approximately 41% of broadband access lines in Colorado were served by cable modem. *Id.* The Commission found that "more than 99% of the country's population lives in the 99% of zip codes where a provider reports having at least one high-speed service subscriber," (*id.*) and that every zip code in Colorado has at least one broadband service provider available as of June 2006. *Id.* Competitive broadband services are now widely available from multiple providers in the Denver MSA, and have been embraced by a rapidly increasing number of customers. Each broadband customer represents a potential VoIP subscriber. *Id.*

The non-Qwest broadband facilities capable of carrying VoIP calls include wireless broadband ("WiFi") service, which is being actively deployed in many communities within Qwest's service territory in the Denver MSA. WiFi is available in over 83 public locations within the Denver MSA. *See* Brigham and Teitzel Declaration ¶ 40 and Exhibit 5, p.8. In addition, the Downtown Denver Partnership began offering free WiFi along the 16th Street Mall in Downtown Denver. *Id.* Moreover, a group of ten Denver-area communities, including seven within the Denver MSA, announced the planned creation of one of the largest regional WiFi networks in the country. *Id.* Consumers can utilize the WiFi connection in any WiFi "hotspot" to access the Internet and use VoIP services to make and receive telephone calls without reliance on Qwest's local network. *Id.*

The Commission has previously acknowledged that some portion of mass market consumers view certain over-the-top VoIP services as substitutes for wireline local service.[33] Currently there are at least 70 VoIP providers (excluding Qwest) serving the Denver MSA including Vonage, Packet8, Skype, Speakeasy, SunRocket and others. Many of these providers

[33] *AT&T/BellSouth Merger Order* ¶ 94.

(including Vonage and Packet8) offer service options for both residential and business markets. Brigham and Teitzel Declaration ¶ 45. Other providers such as Speakeasy and SunRocket focus primarily on the residential market. *Id.* Since VoIP calls do not rely on Qwest's switched network (and calls transported via non-Qwest broadband facilities do not rely on Qwest's local loop network), the rapid customer adoption of VoIP represents an additional form of competition that bypasses Qwest. Thus, VoIP should be included in the forbearance analysis because it too constrains Qwest's ability to raise its prices or otherwise harm consumers.

5. Qwest Wholesale Alternatives

In the *Omaha Forbearance Order*, the Commission also relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets."[34] The Commission recognized that where there are "very high levels of retail competition that do not rely on the Qwest facilities -- and for which Qwest receives little to no revenue" Qwest has "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than Qwest."[35]

As demonstrated above, there is extensive facilities-based retail competition in the Denver MSA. Qwest has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission's decision to eliminate the UNE platform, Qwest began offering its QPP/QLSP service, which provides the same features and functionality as the UNE platform, but at negotiated market rates. As of December 2006, competitors in the Denver MSA were serving approximately [redacted] voice grade equivalent ("VGE") residential lines using this wholesale product. Brigham and Teitzel Declaration ¶ 22 and Highly

[34] *Omaha Forbearance Order*, 20 FCC Rcd at 19447 ¶ 64; *see id.* at 19433 ¶ 37.

[35] *Id.* at 19448-49 ¶ 67.

Confidential Exhibit 2. As of that same date, competitors were reselling approximately [redacted] VGE residential lines in the Denver MSA pursuant to the resale provisions of Section 251(c)(4). *Id.*

6. Decline in Qwest's Retail Lines

In the *Omaha Forbearance Order*, the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both "actual and potential competition" that "either is present, or readily could be present."[36] This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that "an analysis of the level of competition for LEC services based solely on a LEC's market share at a given point in time would be too static and one-dimensional."[37] "[T]he presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares."[38]

As demonstrated above, there are multiple competitive alternatives that are widely available in the Denver MSA and that also are being used by mass market consumers. This fact is further confirmed by the declines that Qwest has experienced in its base of switched access lines. Between 2000 and 2006 Qwest's residential switched access lines have declined by

[36] *Id.* at 19446 ¶ 62.

[37] *In the Matter of Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T,* Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, 922-23 ¶ 143 (1995).

[38] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21579 ¶ 148 (2004).

approximately [redacted] percent, from [redacted] to [redacted] even though the number of households in the Denver MSA increased by approximately 13 percent during the period from 2000 to 2005. *See* Brigham and Teitzel Declaration ¶ 5. Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing given "the widespread availability of cable telephony and its associated multi-service bundles."[39]

Since Qwest's wireline, VoIP, and cable telephony competitors are under no obligation to report customer in-service data, especially at the MSA level, precise measurements of competitor "shares" are not possible to obtain. However, independent research houses have addressed this issue by conducting primary customer research to quantify competitive telecommunications dynamics. For example, TNS Telecoms, an independent research firm, conducts a quarterly "share" analysis in each of the states to estimate competitors' shares of the residential telecommunications markets and to provide insights into the changes in competitive trends.[40] Brigham and Teitzel Declaration ¶ 6. In fourth Quarter 2000, TNS reported Qwest's share of residential communications connections in the Denver MSA at [redacted]. *Id.* By the fourth Quarter 2006, Qwest's share of residential communications connections in the Denver MSA had

[39] *Regulatory Event Risk Headlines Fitch's U.S. Telecom Outlook for 2007,* November 29, 2006. *See* Brigham and Teitzel Declaration Exhibit 1, p.72.

[40] In conducting its study, TNS collects actual billing information from a statistically-reliable sample of customers in each state and tabulates the number of residential customers subscribing to Qwest service (landline, DSL or wireless) as well as services of non-Qwest landline and wireless competitors. TNS uses this data to calculate "shares of customer connections" (excluding video connections) for each service provider in the consumer telecommunications market. In calculating "connections shares," TNS defines a "connection" as any telecommunications service used by the customer. A residential access line, a wireless service and a broadband Internet line used by a customer would each be counted as a discrete "connection" under TNS' definition in its calculations of "connections shares." For example, a customer with Qwest landline service, Qwest DSL service and Verizon Wireless service would be counted as having three "connections," and Qwest's "connections share" in this example would be 66%. Brigham and Teitzel Declaration ¶ 6.

declined to [redacted]. *Id.* These data confirm that Denver-area consumers are utilizing substitutes for Qwest's service to satisfy their telecommunications needs.

In the *Sunset Order*, the Commission noted that the availability of wireless and VoIP constrains Qwest's market power given the large and growing percentage of customers who subscribe to both wireline service and wireless and/or broadband Internet access, and who thus have the ability to shift usage in response to price changes.[41] Although the Commission reached these conclusions in the context of analyzing the market for long distance services, the conclusions are applicable here because consumers have access to a similar multiplicity of platforms. Moreover, for those services such as wireless and over-the-top VoIP, where consumers pay an "all you can eat" price, once consumers have purchased these services for use with long distance services, there is no incremental cost for local use.

In sum, Qwest faces many substitutes for its wireline services. Increasing numbers of mass market customers subscribe to competitive wireline and cable services. Additionally, increases in subscriptions to broadband Internet access services allow customers to subscribe to over-the-top VoIP service. Moreover, there have been increased subscriptions to mobile wireless services, accompanied by a migration of wireline minutes to mobile wireless minutes. All of these trends indicate that consumers are increasingly finding that these alternative services serve as substitutes for Qwest's traditional wireline service offerings.[42] Thus, in the mass market, the enforcement of unbundling is not necessary to ensure that charges are just and reasonable, and not unjustly discriminatory; nor is unbundling necessary for consumer protection. Similarly, dominant carrier tariff regulation is no longer necessary to ensure that charges are just and reasonable, nor for consumer protection.

[41] *See Sunset Order* ¶¶ 34, 37, 38.

[42] *See id.* ¶ 38.

B. Enterprise Customers Also Have Access to a Wide Range of Competitive Alternatives

The provision of services to enterprise customers is also highly competitive. Moreover, the customers themselves are highly sophisticated purchasers of communications services.[43] They tend to make their decisions about communications services by using either communications consultants or employing in-house communications experts.[44] Accordingly, the Commission has previously expressed its expectation that enterprise customers are aware of the multitude of choices available to them,[45] and are able to take advantage of the competitive choices available to them, seeking out the best-priced alternatives.[46] In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling based on competition from Cox, the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully.[47] As in the mass market, evidence demonstrates that "the level of facilities-based competition [in the Denver MSA] ensures that market forces will protect the interests of consumers."[48] As the Commission has previously found, numerous categories of competitors provide services to enterprise

[43] *See id.* ¶ 46; *AT&T/BellSouth Merger Order* ¶ 82.

[44] *See Sunset Order* ¶ 46.

[45] *See id.*

[46] *AT&T/BellSouth Merger Order* ¶ 82.

[47] *Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66; *see id.* 19448-49 ¶ 67.

[48] *Id.* at 19416 ¶ 1.

customers.[49] These include cable companies, wireless providers, CLECs, data/IP network providers, VoIP providers, system integrators, and equipment vendors.[50]

1. Cable

Comcast's cable network in the Denver MSA is capable of -- and is -- being used to serve enterprise customers. In the *Omaha Forbearance Order*, the Commission found that Cox's cable facilities were "capable of delivering both mass market and enterprise telecommunications services."[51] The Commission relied on the fact that Cox had "strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market."[52] The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers, as compared to mass market, because the "revenue potential" is greater.[53] The Commission concluded that, in light of these facts, "Cox poses a substantial competitive threat . . . for higher revenue enterprise services."[54] In reaching this conclusion, the Commission found the fact that Cox's existing network did not necessarily reach every individual business location as "not . . . dispositive" in light of the other evidence demonstrating Cox's incentives and ability to serve these customers.[55]

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[49] *Sunset Order* ¶ 30.

[50] *See id.*; *AT&T/BellSouth Merger Order* ¶ 70.

[51] *Omaha Forbearance Order*, 20 FCC Rcd at 19448 ¶ 66.

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* ¶ 66 n.174.

This same analysis applies with equal force in the Denver MSA. As demonstrated above, Comcast has had "strong success in the mass market" in the Denver MSA. Moreover, it has a nearly ubiquitous network and therefore possesses "the necessary facilities to provide enterprise services." Indeed, Comcast recently announced that its "next great business opportunity" is to sell Internet, voice and video services to businesses. Brigham and Teitzel Declaration ¶ 18. Comcast's target is to capture 20% of the business phone market in five years. *Id.* Comcast already markets services to business customers, including Internet access service and pay TV, and plans to launch voice services in 2007. *Id.* In the meantime, Comcast is arranging for its Denver-area business customers to receive digital voice services through its strategic cross-marketing arrangement with Greenwood Village-based IP5280 Communications (a VoIP services provider). *Id.* This arrangement calls for Comcast to refer business customers interested in VoIP to IP5280, which in turn will refer its customers to Comcast's data services. IP5280 acknowledged that the deal was "a temporary stopgap before Comcast introduces its own VoIP offering for businesses." *Id.*

2. Wireline CLECs

Second, a large number of other competitors provide extensive business retail competition in the Denver MSA. As stated above, CLECs are utilizing Qwest resale or QPP/QLSP wholesale services to compete with Qwest in every wire center in the Denver MSA. Brigham and Teitzel Highly Confidential Exhibit 2. Qwest estimates that CLECs competing through QPP/QLSP and Resale are providing approximately [redacted] business lines. *Id.* This does not take into account any CLECs competing via Special Access services, CLEC-owned switches and loops or network facilities leased from non-Qwest providers.

As explained above, in connection with mass market service, to the extent CLECs are utilizing their own networks to serve enterprise customers in the Denver MSA, Qwest has no means to obtain precise in-service access line counts for these CLECs. However, Qwest does track the number of white pages listings, by rate center, of CLECs that are "facilities-based" (those utilizing CLEC-owned switches and loops and/or CLEC-owned switches and unbundled loops or Special Access services purchased from Qwest), and Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 36% of its business lines[56] are listed in the white pages directories. Brigham and Teitzel Declaration n.66. Based upon white pages listings data as of January 2007, and presuming facilities-based CLECs' customers choose to list their telephone numbers in the white pages directory in the same proportions as Qwest's customers, there were approximately [redacted] business lines associated with facilities-based CLECs in the rate centers in the Denver MSA. *Id.* ¶ 23.

In the *Omaha Forbearance Order*, the Commission also considered "evidence that a number of carriers . . . had success competing for enterprise services using DS1 and DS3 special access channel terminations obtained from Qwest" as relevant in its analysis of enterprise competition.[57] The Commission held that "this competition that relies on Qwest's wholesale inputs -- which must be priced at just, reasonable and nondiscriminatory rates . . . supports our conclusion that section 251(c)(3) unbundling obligations are no longer necessary to ensure that the prices and terms of Qwest's telecommunications offerings are just and reasonable and nondiscriminatory under section 10(a)(1)."[58]

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[56] In particular, business customers often elect to list only their primary telephone number in the white pages directory. To the extent customers of facilities-based CLECs do not request that their telephone numbers be reported to Qwest for input to the white pages database, these telephone numbers are not reflected in the facilities-based CLEC customer white pages listings at all. Brigham and Teitzel Declaration n.66.

[57] *Omaha Forbearance Order*, 20 FCC Rcd at 19449-50 ¶ 68.

[58] *Id.* (Footnote omitted.) The forbearance that Qwest seeks here will not eliminate Qwest's obligations under Sections 201 and 202 to provide its services on just and reasonable, nondiscriminatory terms.

As in Omaha, competitors in the Denver MSA are competing extensively using Special Access obtained from Qwest. As of December 2006, competitors purchased over [redacted] Special Access channels from Qwest in the Denver MSA. Brigham and Teitzel Declaration ¶ 32. The number of VGE circuits being provided by competitors using Qwest Special Access services exceeds the number of VGE circuits being provided by CLECs using UNEs, QPP/QLSP, and resale combined. *Id.* Over [redacted] of the Special Access VGEs in the Denver MSA are in wire centers that also have competitive fiber in place. *Id.* ¶ 33.

There are numerous CLECs competing with Qwest for enterprise customers within the Denver MSA. A prominent wireline competitor is AT&T, the largest telecom company in the country, which offers a wide range of telecommunications services to both residential and business customers in the Denver MSA. It has over [redacted] route miles of fiber within the MSA, which allow it to provide a wide range of services without relying on the purchase of Qwest wholesale services. *Id.* ¶ 24. Notably, AT&T has a Metropolitan Area Acquisition ("MAA") contract with the General Services Administration, which allows federal agencies throughout most of the Denver MSA to "take advantage of [AT&T's] advanced technologies, network reliability and competitive rates." *Id.*

Although, Qwest's share of the business market is declining, Cbeyond Communications, another CLEC, is experiencing growth. Cbeyond focuses on small business customers along Colorado's Front Range, including the Denver MSA. *Id.* ¶ 25. Cbeyond's Denver market revenues grew by 17% between December 2005 and December 2006. *Id.*

3. System Integrators, IP-Enabled Service Providers and Other Competitors

Third, as the Commission recently acknowledged in the context of the AT&T/BellSouth merger, "systems integrators and the use of emerging technologies, including various Internet

Protocol enabled (IP-enabled) technologies, are likely to make [the enterprise] market more competitive, and this trend is likely to continue in the future."[59] Demand for systems integrators is driven by the need for the extensive planning and management necessary to create communications systems blending voice, data, video, Internet, and wireless applications. Brigham and Teitzel Declaration ¶ 58. In the enterprise market, nearly half of all medium and large enterprises use some form of managed telecommunications and IT services. *Id.* The North American managed telecom service market generated $18.6 billion in revenues in 2006.[60] Equipment vendors and systems integrators such as IBM, New Edge Networks, Mammoth Networks, and others compete in the Denver MSA. *Id.* For example, New Edge provides managed telecom services to small businesses, large corporations and telecom carriers. *Id.* ¶ 59. IBM helps customers "design, deploy and manage an IP telephony infrastructure that can help reduce the costs associated with managing and maintaining separate voice, and data and equipment networks." *Id.* Mammoth Networks provides DSL, Frame Rely and ATM service aggregation, allowing customers to connect circuits to its network. *Id.*

The increasing role of system integrators in the enterprise market may be based in part on the fact that VoIP providers are also making competitive inroads into the enterprise market. In 2005, 36% of large and 23% of medium North American organizations interviewed by a major research firm were already using VoIP products and services. That research firm estimated that by 2010, almost half of small and two-thirds of large organizations in North America would be using VoIP products and services. Brigham and Teitzel Declaration ¶ 48. A number of VoIP competitors serve the Denver MSA, and some are headquartered in the MSA. IP5280, a Denver-based company, sells VoIP services targeted to enterprise business customers. It specializes in

[59] *See AT&T/BellSouth Merger Order* ¶ 81.

[60] *Id.* n.172.

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VoIP and converged IP Voice and data services, and is partnering with WavMax and Comcast. *Id.* WavMax, headquartered in Littleton, Colorado, offers wireless broadband in at least 25 communities in the Denver area. WavMax also offers VoIP service to business, with prices starting at $35 "per seat" per month for local service and unlimited long distance calling. *Id.* ¶ 41. SimpleSignal, a, California-based VoIP competitor, has a Denver-area office. It also targets business customers, particularly medium-sized businesses. *Id.* ¶ 47.

4. Competitive Fiber

Finally, there are extensive competitive fiber networks in the Denver MSA. According to GeoTel, a leading provider of telecommunications facilities information, approximately [redacted] miles of fiber (excluding fiber owned by Qwest and Qwest's affiliates) are now in place in the Denver MSA, and this fiber is typically used by Qwest's competitors to serve enterprise and wholesale customers. Brigham and Teitzel Declaration ¶ 34. At least one fiber-based competitor has facilities in [redacted] of Qwest's wire centers in the Denver MSA, and these wire centers contain [redacted] of Qwest's residential lines and [redacted] of Qwest's retail business lines in the MSA. *Id.* In addition, competitive fiber is now being used to serve over [redacted] buildings in the Denver MSA. *Id.*

Carriers with significant fiber facilities in the Denver MSA include [redacted]. Brigham and Teitzel Declaration ¶ 35. Confidential Exhibit 4 shows the known fiber routes for 20 entities with competitive fiber facilities in the Denver MSA. Given these significant facilities-based competitors who can provide retail or wholesale services, it is clear that Qwest faces competition in its efforts to reap more revenue "indirectly from retail customers who choose a retail provider other than Qwest."[61]

5. Decline in Qwest's Retail Lines

Given the competition from Comcast, wireline CLECs, systems integrators, VoIP providers, entities with competitive fiber networks, and other players it is not surprising that Qwest has lost a significant proportion, [redacted], of its retail business lines between December 2000 and December 2006. Brigham and Teitzel Declaration ¶ 5. Qwest had [redacted] business retail access lines in December 2000, and just [redacted] in December 2006. *Id.* Just as in the mass market, developing precise measurements of business "share" in the business market is difficult, given the diverse scope of intramodal and intermodal competition that now exists in the Denver MSA and the general lack of available customer in-service data for these competitors. However, TNS Telecoms conducts primary research in the small business and Enterprise business segments and has assembled "revenue share" estimates for those markets as indicators of competitive trends. In stratifying the business market, TNS classifies businesses generating less than $1,500 in monthly telecom spending as small business customers, and business customers spending at or above this level as "enterprise" business customers. Brigham and Teitzel Declaration ¶ 7. In the small business category, TNS' research shows that Qwest's revenue share in the Denver MSA was [redacted] in fourth Quarter 2006. *Id.* In the enterprise market, Qwest's revenue share in the Denver MSA was [redacted] in fourth Quarter 2006. *Id.* These data confirm that Denver MSA businesses are utilizing substitutes for Qwest's service to satisfy their communications needs, particularly at the high end

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[61] *Omaha Forbearance Order*, 20 FCC Rcd at 19448-49 ¶ 67.

of the market. Systems integrators and the increased use of IP-enabled technologies are likely to make this market more competitive in the future.

III. THE THIRD PART OF THE FORBEARANCE TEST IS SATISFIED BECAUSE THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST

As the Commission found in the *Omaha Forbearance Order*, evidence of competition satisfies not only the first two prongs of the forbearance test, but also supports a finding that the third prong of the forbearance test is met, *i.e.* it is in the public interest to eliminate the regulations in question.[62] In the *Omaha Forbearance Order* the Commission also identified two additional reasons why forbearance from the regulations at issue was in the public interest. Both reasons apply with equal force in the Denver MSA.

First, as the Commission found in Omaha, the costs of the unbundling obligations that Qwest faces in the Denver MSA outweigh the benefits. Both the Commission and the D.C. Circuit have recognized the harm to the public interest and to competition from excessive unbundling. As the Commission has explained, "excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[63] Similarly the D.C. Circuit has recognized that mandated unbundling "imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities."[64] Given the extensive facilities-based competition that already exists in the Denver MSA, and the potential for even greater facilities-based competition to emerge, any potential benefits from unbundling regulation are slim, while

[62] *See Omaha Forbearance Order*, 20 FCC Rcd at 19437 ¶ 47, 19453 ¶ 75.

[63] *In the Matter of Review of the Section 251Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 16984 ¶ 3 (2003) (subsequent history omitted).

[64] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

the costs of such regulatory intervention are significant.[65] Forbearance will give Qwest and other facilities-based competitors, greater incentives to continue to invest in facilities, which will ensure the continued growth of long-lasting facilities-based competition.

Eliminating unbundling regulation will also "further the public interest by increasing regulatory parity" among telecommunications providers in the Denver MSA. These regulations were imposed at a time when Qwest's narrowband circuit-switched network was a dominant technology but this is far from the case today. Qwest is now losing mass market and enterprise lines and customers to wireless and broadband competitors. As the Commission noted, it is "in the public interest to place intermodal competitors on an equal regulatory footing by ending unequal regulation of services provided over different technological platforms."[66] In the face of such competition, asymmetrical regulation imposes artificial price constraints that delay and impede full and fair competition among providers and harms consumers.[67]

Second, as the Commission also found in Omaha, eliminating dominant carrier regulations that apply to interstate switched access services is consistent with the public interest where vigorous local competition has emerged.[68] As demonstrated above, cable voice services in the Denver MSA are more widely available than they were in Omaha, and other types of competition are even more widespread than they were in December 2005 when the Commission issued the *Omaha Forbearance Order*. Moreover, with respect to interstate switched access

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[65] *See Omaha Forbearance Order,* 20 FCC Rcd at 19454 ¶ 77.

[66] *Id.* at 19454-55 ¶ 78.

[67] *See, e.g., In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14878 ¶ 45, 14890-91 ¶ 71, 14895-96 ¶ 79 & n.241 (2005), *appeal pending sub nom. Time Warner Telecom v. FCC*, No. 05-4769 (and cons. cases) (Third Cir.), *oral argument held*, Mar. 16, 2007.

[68] *See Omaha Forbearance Order,* 20 FCC Rcd at 19437 ¶ 47.

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services, competitive wireless services are particularly significant because customers can use their wireless phones for long-distance calls even where they do not abandon their wireline phone entirely. In fact, large fractions of long distance calls and minutes have already migrated to wireless. Brigham and Teitzel Declaration ¶ 38.

As the Commission found in Omaha, eliminating dominant carrier regulation for interstate switched access services also will promote the public interest by eliminating the unnecessary costs such regulations impose. In particular, "[i]n these environments that are competitive for end users, applying these dominant carrier regulations to Qwest limits its ability to respond to competitive forces and, therefore, its ability quickly to offer consumers new pricing plans or service packages."[69]

The Commission has similarly recognized in other contexts that certain "regulations associated with dominant carrier classification can also have undesirable effects on competition."[70] For example, the Commission has recognized that tariffing requirements "impose significant administrative burdens on the Commission and the BOC[s]," and "adversely affect competition."[71] Such regulations reduce the incentive and ability to discount prices in response to competition and to make efficient price changes in response to changes in demand and cost. Likewise, the Commission's price cap regulations limit Qwest's ability to respond to market conditions and competition. Unlike other providers in the Denver MSA, to whom price

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[69] *Id.*

[70] *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*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15808 ¶ 90 (1997) ("*LEC Classification Order*"), *on recon.* 12 FCC Rcd 8730 (1997), *Order*, 13 FCC Rcd 6427 (1998), *on further recon.*, 14 FCC Rcd 10771 (1999); *see also Sunset Order* ¶ 78.

[71] *LEC Classification Order*, 12 FCC Rcd at 15807 ¶ 89.

cap regulation does not apply, Qwest is restricted from responding to competition with deaveraged rates and cannot respond to competitors' bundled service offerings. Competitors also can use these regulations to their advantage, both to undercut each others' pricing or to maintain artificially high prices.

For these reasons, dominant carrier regulation of the switched access market is not only unnecessary to ensure just, reasonable, and not unjustly or unreasonably discriminatory rates, and to protect consumers, but it also impedes Qwest's ability to compete,[72] dampens competition,[73] and is thus harmful to the public interest.

IV. CONCLUSION

For the foregoing reasons, Qwest requests that in the Denver MSA the Commission forbear from loop and transport unbundling regulation, dominant carrier regulation, price cap regulation of switched access services and CEI/ONA requirements.

Respectfully submitted,

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[72] *See Sunset Order* ¶ 78.

[73] *See id.*