



Office of Advocacy  
U.S. Small Business Administration  
409 Third St., S.W.  
Washington, D.C. 20416

July 25, 2008

**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**RE: *Qwest Petitions for Forbearance Pursuant to 47 U.S.C. Section 160 (c) in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas (WC Docket No. 07-97)***

Dear Ms. Dortch:

The Office of Advocacy, U.S. Small Business Administration (“Advocacy”) respectfully submits this *ex parte* filing in the above-referenced proceeding to express our concerns regarding the negative impact of Section 10 forbearance on small competitive local exchange carriers (CLECs) and their small business customers. In response to a new study<sup>1</sup> conducted by QSI Consulting, Advocacy recommends that the Federal Communications Commission (“FCC” or “Commission”) analyze Qwest’s four markets to determine whether sufficient levels of competition exist to support a grant of forbearance from certain regulatory obligations.<sup>2</sup>

<sup>1</sup> QSI Consulting Impact Study: *An Analysis of Qwest’s Petition for Forbearance: A Quantification of the Impact of Forbearance* (2008) [hereinafter, QSI].

<sup>2</sup> See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Denver Colorado Metropolitan Statistical Area, WC Docket No. 07-97 (filed April 27, 2007); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Minneapolis-St. Paul Minnesota Metropolitan Statistical Area, WC Docket No. 07-97 (filed April 27, 2007); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 07-97 (filed April 27, 2007); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 (c) in the Seattle Washington Metropolitan Statistical Area, WC Docket No. 07-97 (filed April 27, 2007).

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (“SBA”), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the Regulatory Flexibility Act (“RFA”) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small business is not lost within the regulatory process.<sup>3</sup> Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.<sup>4</sup> Advocacy believes that the Section 10 assessment is similar to the analysis required in rulemakings under the RFA.<sup>5</sup> Because the RFA and Section 10 direct the FCC to consider the economic impact of regulatory action, both statutes attempt to promote balanced and well-reasoned regulatory action.<sup>6</sup>

Small carriers such as CLECs play an important role in the provision of competitive phone services in the U.S. market. Without proper analysis under Section 10 of the Communications Act of 1934, the grant of regulatory forbearance to major phone carriers may compromise this competitive environment and impose undue economic burdens on small carriers. The QSI Study indicates that if Qwest is not required to make its loop and transport facilities available to competitors at total element long run incremental cost (“TELRIC”) based rates in the Denver, Minneapolis-St. Paul, Phoenix and Seattle Metropolitan Statistical Areas (“MSAs”), wholesale prices will increase for its competitors in these regions.<sup>7</sup> Additionally, a recent Government Accountability Office (“GAO”) Report shows that incumbent local exchange carriers (“ILECS”) have been increasing special access prices in MSAs where the FCC has given them full pricing flexibility.<sup>8</sup> Importantly, the GAO report included some of the same MSAs in which Qwest now seeks forbearance. As such, it is incumbent upon the FCC to review the available market data to determine whether the level of competition afforded by cable companies, wireless providers, and CLECs is sufficient so that the grant of forbearance does not result in unjust and unreasonable pricing. Advocacy recommends that the FCC solicit comment specifically on the economic impact of granting Qwest’s petitions for forbearance using data from the QSI Study or FCC generated data on small business impact prior to ruling on Qwest’s petition. For additional information or assistance, please contact me or Cheryl Johns of my staff at (202) 205-6949 or [cheryl.johns@sba.gov](mailto:cheryl.johns@sba.gov).

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<sup>3</sup> Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>4</sup> Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

<sup>5</sup> Pub. No. 96-354, 94 Stat. 1164 (1980).

<sup>6</sup> 47 U.S.C. § 160 detailing in parts a and b that the Commission must determine: 1) that enforcement of the regulation is not necessary to ensure that rates and other practices are “just and reasonable;” 2) that enforcement of the regulation is not needed to protect consumers; 3) that the forbearance grant is “consistent with the public interest;” and finally stating that 4) the FCC must weigh “whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will promote competition among providers of telecommunications services.”

<sup>7</sup> See QSI, *supra* note 1 at 2.

<sup>8</sup> See *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, GAO-07-80 (November 2006).

Respectfully submitted,

/s/ Thomas M. Sullivan

Thomas M. Sullivan

Chief Counsel

/s/ Cheryl Johns

Cheryl Johns

Assistant Chief Counsel for Telecommunications