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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas)))))))	WC Docket No. 07-97
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**INITIAL COMMENTS OF COVAD COMMUNICATIONS GROUP,
NUVOX COMMUNICATIONS, AND XO COMMUNICATIONS, LLC**

Pursuant to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding on July 6, 2007,¹ Covad Communications Group, NuVox Communications, and XO Communications, LLC (hereinafter referred to jointly as “Commenters”), by their attorneys, hereby file their comments in response to the four petitions filed by Qwest Corporation (“Qwest”) on April 27, 2007, pursuant to Section 10 of the Communications Act of 1934, as amended,² requesting that the Commission forbear from applying to Qwest certain obligations in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas (“MSAs”).³

¹ *Wireline Competition Bureau Grants Extension of Time to File Comments on Qwest’s Petitions for Forbearance in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Public Notice, DA 07-3042 (rel. Jul. 6, 2007).

² See 47 U.S.C. § 160.

³ Qwest seeks forbearance from the loop and transport unbundling regulations contained in Sections 251(c)(3) and 271(c)(2)(B)(ii). Qwest also seeks forbearance from the dominant carrier tariff requirements set forth in Part 61 of the Commission’s rules; from price cap regulations set forth in Part 61 of the Commission’s rules; 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 rule concerning the process for acquiring lines, discontinuing services, making assignments or transfers of

REDACTED – FOR PUBLIC INSPECTION

I. INTRODUCTION AND SUMMARY

The Commission should summarily dismiss Qwest's Petitions because the "evidence" submitted by Qwest to support its forbearance requests is not sufficiently detailed and market-specific to meet its burden of proof. Such shortcomings are particularly fatal here since Qwest should be very familiar with the evidentiary requirements for forbearance from its proceeding regarding forbearance in the Omaha MSA.⁴ The Commission should not tolerate Qwest's intentional refusal to produce adequate evidence and should take such failure as an admission by Qwest that its Petitions are insufficient and should be dismissed.

If the Commission declines to dismiss the Petitions, it should deny Qwest the forbearance it seeks on the merits because Qwest clearly has not met the statutory prerequisites for forbearance contained in Section 10 of the Act. A grant of forbearance by the Commission is lawful only if the Qwest Petitions demonstrate that substantial actual facilities-based competition exists for each relevant product market, and within each relevant geographic market. The Qwest Petitions rely only on the most general information; Qwest does not proffer any of the market-specific data necessary to support its forbearance claims. Moreover, the Qwest Petitions

control. 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 Apr. 27, 2007), at 3-4 ("*Qwest Petition – Denver*"); *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 Apr. 27, 2007), at 3-4 ("*Qwest Petition – Minneapolis*"); *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 Apr. 27, 2007), at 3-4 ("*Qwest Petition – Phoenix*"); *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 Apr. 27, 2007), at 3-4 ("*Qwest Petition – Seattle*").

⁴ *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 Forbearance Order*"), *aff'd Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007).

REDACTED – FOR PUBLIC INSPECTION

improperly rely on overly general information, including line loss and market coverage figures, without providing any data regarding the actual market presence of competing telecommunications service providers.

With regard to Qwest's requests for relief from Part 61 dominant carrier tariffing requirements; dominant carrier requirements under Section 214 of the Act and Part 63 of the Commission's rules; and the Commission's *Computer III* requirements, including CEI and ONA requirements, the Qwest Petitions lack *any* analysis of the statutory requirements of Section 10. Significantly, the Petitions do not address whether Qwest maintains market power within the markets subject to its forbearance requests, nor do the Petitions discuss supply and demand elasticities, or Qwest's costs, resources, structure and size within those markets. Absent any such analysis, a grant of forbearance by the Commission for those non-Section 251 dominant carrier obligations is not justified.

The Commission must consider whether a grant of forbearance would leave providers of competing telecommunications services without meaningful wholesale alternatives, including the network facilities and services that Qwest must offer pursuant to Section 271 of the 1996 Act. Qwest has sought to evade its Section 271 obligations. Moreover, Qwest fails to negotiate in good faith commercial contracts that govern the rates, terms, and conditions of its Section 271 offerings. At bottom, Qwest has not shown that its treatment of its obligations under Section 271 would provide a sufficient backstop to protect consumers and competition if Section 251(c)(3) unbundling were to be granted by the Commission.

It is also clear that the Qwest Petitions are not consistent with the public interest, and therefore do not satisfy the third prong of the Section 10(a) test. Qwest offers no evidence that the regulations at issue are hindering its ability to compete. Rather, despite the costs of

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unbundling, competition and consumer interests will continue to benefit from unbundling throughout the four MSAs. Indeed, the evidence is compelling that competitive conditions in these MSAs are such that continued unbundling is required because market forces alone cannot be relied upon to sustain competition. In making its public interest determinations, Section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. The Commission must not only establish that forbearance would not unduly *harm* consumers and competition, it also must find that substantial competitive *benefits* would arise from forbearance. Qwest has failed to establish such benefits would accrue to the public and, accordingly, the Commission should conclude that the Section 10 standard has not been met.

In addressing Qwest's Petitions, the Commenters discuss the Commission's previous decisions on similar forbearance petitions for the Omaha and Anchorage MSAs.⁵ The Commenters caution the Commission, however, to bear in mind its statements in the *Omaha Forbearance Order* and the *Anchorage Forbearance Order* that its findings were limited to the specific facts and circumstances in existence in those particular MSAs and that its decisions did not establish "rules of general applicability."⁶ In deciding both the Omaha and Anchorage forbearance petitions, the Commission emphasized that it was not "issu[ing] any declaratory rulings, promulgat[ing] any new rules, or otherwise mak[ing] any general determinations"

⁵ See *Omaha Forbearance Order; Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, As Amended, for Forbearance From Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007) ("*Anchorage Forbearance Order*").

⁶ *Anchorage Forbearance Order*, at ¶ 1.

REDACTED – FOR PUBLIC INSPECTION

regarding forbearance.⁷ This fact is particularly critical here, given the major differences in the size, scope, and importance of the markets involved in the current proceeding as compared to the Omaha and Anchorage MSAs.⁸

Moreover, the Commenters urge the Commission to take notice of the fact that the predictive judgment it employed in reaching the decision to grant Qwest's forbearance in certain wire centers in the Omaha MSA has proven incorrect. The Commission's assumption that Qwest would offer wholesale access to its dedicated facilities on reasonable terms and conditions once released from the legal mandate of Section 251(c)(3) has proven inaccurate. The Commission should take into account Qwest's aggressive post-forbearance attempts in Omaha to stifle competition that relies on continued use of its last-mile facilities in determining whether forbearance is warranted here.

⁷ *Omaha Forbearance Order*, at ¶ 14.

⁸ The Commenters also note that parts of these comments address the *Anchorage Forbearance Order* notwithstanding the fact that the Commenters have moved the Commission to vacate the *Order* on the ground that no case or controversy continues to exist, rendering the *Order* meaningless and unnecessary. *See Motion to Vacate*, WC Docket No. 05-281 (filed Jul. 5, 2007). The motion remains pending.