



PUBLIC NOTICE

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DA 10-647
April 15, 2010

**REQUEST FOR ADDITIONAL COMMENT AND DATA RELATED TO
QWEST CORPORATION'S PETITION FOR FORBEARANCE FROM
CERTAIN NETWORK ELEMENT AND OTHER OBLIGATIONS
IN THE PHOENIX, ARIZONA MSA**

WC Docket No. 09-135

Comments Due: April 29, 2010

In this proceeding, Qwest Corporation (Qwest) has sought forbearance from certain regulatory obligations within its service footprint in the Phoenix, Arizona Metropolitan Statistical Area (MSA), pursuant to 47 U.S.C. § 160. In particular, Qwest has sought forbearance from: (1) loop and transport unbundling obligations; (2) dominant carrier tariffing and price cap regulations for its mass market and enterprise switched access services; (3) requirements applicable to dominant carriers under section 214 of the Communications Act concerning processes for acquiring lines, discontinuing service, and assignments or transfers of control; and (4) certain *Computer III* requirements, including comparably efficient interconnection and open network architecture.¹

In filings in this proceeding, certain commenters have urged the Commission to adopt a different standard for analyzing incumbent local exchange carrier (LEC) forbearance petitions than has been applied in prior forbearance proceedings involving similar requests for relief. A group of competitive LECs urge the Commission to adopt a standard "that hews closely to basic principles of competition policy and the FTC-DOJ Horizontal Merger Guidelines."² Similarly, another filer urges the Commission, in assessing Qwest's forbearance request, to examine Qwest's market power in discrete product and geographic markets under the standards of the FTC-DOJ Horizontal Merger Guidelines and the similar market power analysis that the Commission has conducted in recent merger decisions.³

¹ Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135 (filed Mar. 24, 2009) (Qwest Phoenix MSA Petition).

² Opposition of Integra Telecom, Inc., *et al.*, WC Docket No. 09-135, at 2 (filed Sept. 21, 2009).

³ Comments of PAETEC Holding Corp., WC Docket Nos. 06-172 & 07-97, at 40-47 (filed Sept. 21, 2009), appended as Attachment 1 to Opposition of PAETEC Holding Corp., WC Docket 09-135 (filed Sept. 21, 2009) (citing, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005); and *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of*

We invite comment by Qwest and other interested persons on whether, in considering Qwest's Phoenix MSA Petition, we should apply a market power-oriented approach along the lines suggested in the FTC-DOJ Horizontal Merger Guidelines and the cited Commission merger decisions. We also seek comment on how that analytical approach would apply, should the Commission adopt such an approach to evaluating competition for purposes of the forbearance request here. How should the Commission define the relevant product and geographic markets? For example, we seek comment on how the Commission should determine whether, for mass market consumers, mobile wireless service is in the same relevant product market as wireline telephone service.⁴ We also seek comment on whether the record evidence supports granting forbearance in this proceeding, if we were to adopt such an approach. We ask Qwest and other interested persons to cite specific evidence in the record or provide new data as needed to support their pleadings in response to these issues.

Interested persons therefore have until **April 29, 2010** to file comments in response to this Public Notice in this docket. All other filing requirements set forth in the Public Notice establishing the initial pleading cycle remain in effect.⁵

For further information regarding this proceeding, contact Denise Coca, Wireline Competition Bureau, (202) 418-0574 or Tim Stelzig, Wireline Competition Bureau, (202) 418-0942.

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Control, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005)); *see also* Comments of Broadview Networks, Inc. *et al.*, WC Docket No. 09-135, at 12-22 (filed Sept. 21, 2009) (advocating use of a market power approach and citing, *inter alia*, *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995)); Comments of Arizona Corporation Commission, WC Docket No. 09-135, at 8 (filed Sept. 21, 2009) (urging the Commission to use a traditional market power approach in its forbearance analysis).

⁴ A key element of the Guidelines, as they relate to product market definition, includes an inquiry into whether a hypothetical monopoly provider of a service profitably could impose a "small but significant and nontransitory" increase in the price of such service. FTC-DOJ Horizontal Merger Guidelines §§ 1.11, 1.12.

⁵ *See Pleading Cycle Established for Comments on Qwest Corporation's Petition For Forbearance in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Public Notice, 24 FCC Rcd 9470, 9471-73 (2009).