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MEMORANDUM

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AZ CORP COMMISSION
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TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

DATE: January 12, 2004

RE: STAFF REPORT FOR THE INVESTIGATION INTO QWEST'S CABLE WIRE AND SERVICE TERMINATION POLICIES AND TARIFFS OF OTHER TELECOMMUNICATIONS CARRIERS WITH RESPECT TO ACCESS TO MTE/MDU TENANTS (DOCKET NO. T-00000A-02-0280)

Attached is the Summary and Recommendations for the Investigation into Qwest's Cable Wire and Service Termination Policies and Tariffs of other Telecommunications Carriers with respect to access to MTE/MDU Tenants. This filing is submitted pursuant to the Procedural Order dated October 14, 2003 in this matter. Staff has summarized the comments of Cox Arizona Telcom, Inc., AT&T Communications of the Mountain States, Inc. and Qwest Corporation. Staff recommends that a Notice of Inquiry ("NOI") be commenced in this docket to gather information on the effect that the elimination of Options 2 and 3 from Qwest's CWSTP tariff or the elimination of similar activities by CLECs may have on the ability of end-users to take advantage of a competitive local exchange service market. Staff also recommends that the NOI gather information on the implementation of preferred carrier agreements by local exchanger companies and how these preferred carrier agreements affect an end-user's ability to obtain service from a competitive carrier.

EGJ:WMS:hml

Originator: Wilfred Shand, Jr.

Arizona Corporation Commission
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JAN 12 2004

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**STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

SUMMARY AND RECOMMENDATIONS

DOCKET NO. T-00000A-02-0280

JANUARY 2004

STAFF ACKNOWLEDGMENT

The Staff Report for the Summary and Recommendations for the Investigation Into Qwest's Cable Wire And Service Termination Policies And Tariffs Of Other Telecommunications Carriers With Respect To Access To MTE/MDU Tenants (Docket No. T-0000A-02-0280) was the responsibility of the Staff members listed below.



Wilfred Shand, Jr.
Public Utility Manager

**EXECUTIVE SUMMARY
SUMMARY AND RECOMMENDATIONS
DOCKET NO. T-00000A-02-0280**

By Procedural Order dated October 10, 2003, Cox Arizona Telcom, L.L.C. ("Cox") was ordered to file, no later than November 12, 2003, comments that responded to the following:

1. Discuss the manner in which the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO") resolves Cox's concerns about Qwest Corporation's ("Qwest's") Cable, Wire and Service Termination Policy ("CWSTP") tariff and Cox's requests: (a) that the Commission require Qwest to modify its Cable Wire and Service Termination Policy tariff on a going-forward basis only to eliminate its potential anti-competitive effects; (b) "that the existing Qwest tariffs will act to perpetuate problems with Competitive Local Exchange Carrier ("CLEC") access to subloops"; (c) that three of the options offered in the CWSTP tariff interfere with CLEC access to MTE/MDU tenants and increase the cost of access; and (d) the minimum point of entry ("MPOE") should be located and configured in such a manner as to allow ready and easy access to the MPOE.
2. Does Cox's position conflict with any portion of the FCC's ruling.
3. Whether it is necessary to continue with this docket in light of the FCC's TRO.
4. If the Commission should continue to pursue the matter, what issues need to be addressed and how they should be resolved.

Interested parties were to file responsive comments no later than December 12, 2003 and were to respond to items 3 and 4, above regardless of Cox's responses. Staff was ordered to summarize the comments and make recommendations concerning further proceedings by January 12, 2004.

Staff has summarized the comments of Cox Arizona Telcom, Inc., AT&T Communications of the Mountain States, Inc. and Qwest Corporation. Staff recommends that a Notice of Inquiry ("NOI") be commenced in this docket to gather information on the effect that the elimination of Options 2 and 3 from Qwest's CWSTP tariff or the elimination of similar activities by CLECs may have on the ability of end-users to take advantage of a competitive local exchange service market. Staff also recommends that the NOI gather information on the implementation of preferred carrier agreements by local exchanger companies and how these preferred carrier agreements affect an end-user's ability to obtain service from a competitive carrier.

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SUMMARY AND RECOMMENDATIONS

I. Introduction

In accordance with the Commission's October 10, 2003 Procedural Order, Staff submits the following Summary of Comments and Recommendations concerning further proceedings.

II. Procedural History

On October 9, 2001, Cox submitted Exceptions to the Recommended Order ("Exceptions") concerning "Emerging Service" in Docket No. T-00000A-97-0238.¹ The Emerging Services issues included issues related to sub-loop access.

In its Exceptions, Cox recommended that the Commission require Qwest to modify the CWSTP section of its tariff so that all new Qwest entrance facilities to multi-tenant environments and campus properties (as well as all major reconfigurations of Qwest entrance facilities at such locations) will have the MPOE and the demarcation point located at the same place near the edge of the property line. The MPOE is the closest practicable point to where regulated telephone facilities cross a property line or enter a building.² This is the point where Qwest's network terminates. The demarcation point is the point of interconnection between Qwest's regulated telecommunications facilities and terminal equipment, protective apparatus or wiring at a premise.³

During its November 16, 2001 Special Open Meeting, the Commission directed Staff to open a proceeding to examine the issues raised by Cox. On April 12, 2002, Staff requested that a Generic Docket be opened and also filed a request for Procedural Order in order to obtain information from interested parties. By Procedural Order dated July 29, 2002, the interested parties were required to reply to the list of questions that Staff had included in its request for a Procedural Order. Comments by AT&T Communications of the Mountain States, Inc. ("AT&T") were docketed on August 29, 2002. Comments by Qwest and Cox were docketed on August 30, 2002.

By Procedural Order dated February 12, 2003, Staff was required to file a status report briefly stating the issues pertinent to this docket that were addressed by the FCC and Containing Staff's procedural recommendations for this docket. The Status Report was to be filed within fifteen days of the FCC releasing its Order. The TRO was released on August 21, 2003 and the Staff's Status Report was submitted on September 5, 2003.

By Procedural Order dated October 10, 2003, Cox Arizona Telcom, L.L.C. ("Cox") was ordered to file, no later than November 12, 2003, comments that responded to the following:

¹ In the Matter of US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. T-00000A-97-0238.

² Qwest Corporation, Exchange and Network Services Price Cap Tariff, Section 2.1.

³ Qwest Corporation, Exchange and Network Services Price Cap Tariff, Section 2.1.

1. Discuss the manner in which the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO") resolves Cox's concerns about Qwest Corporation's ("Qwest's") Cable, Wire and Service Termination Policy ("CWSTP") tariff and Cox's requests: (a) that the Commission require Qwest to modify its Cable Wire and Service Termination Policy tariff on a going-forward basis only to eliminate its potential anti-competitive effects; (b) "that the existing Qwest tariffs will act to perpetuate problems with Competitive Local Exchange Carrier ("CLEC") access to subloops"; (c) that three of the options offered in the CWSTP tariff interfere with CLEC access to MTE/MDU tenants and increase the cost of access; and (d) the minimum point of entry ("MPOE") should be located and configured in such a manner as to allow ready and easy access to the MPOE.
2. Does Cox's position conflict with any portion of the FCC's ruling.
3. Whether it is necessary to continue with this docket in light of the FCC's TRO.
4. If the Commission should continue to pursue the matter, what issues need to be addressed and how they should be resolved.

Interested parties were to file responsive comments no later than December 12, 2003 and were to respond to items 3 and 4, above regardless of Cox's responses. Staff was ordered to summarize the comments and make recommendations concerning further proceedings by January 12, 2004.

III. Discussion

A. Qwest's Cable, Wire, and Service Termination Policy Tariff

Qwest's CWSTP tariff allows for the placement and maintenance of regulated cable/wire and services to a point of demarcation that is mutually acceptable to Qwest and the premises owner.⁴ There are four termination options from which the premises owner may choose. **Option 1** provides for the termination of all Qwest facilities upon entering a building. This option is available for both single and multi-tenant buildings. The premises owner may choose to have Qwest terminate at common areas throughout buildings at mutually agreed to locations. This is **Option 2** and this option is not available for single tenant buildings. Under **Option 3**, which is also not available to single tenant buildings, Qwest will terminate facilities at mutually agreeable locations within each individual space/units within 12" of the cable/wire entry. Finally, **Option 4** provides for the termination of facilities at one mutually agreed upon location on the property.

⁴ Qwest Corporation, Exchange and Network Services Price Cap Tariff, Section 2.8.A

B. The Issues Pertinent To This Docket That Were Addressed By the FCC

In its Triennial Review Order (“TRO”)⁵, the FCC addressed subloops for multiunit premises access and network interface devices (“NIDs”). The FCC addressed the issue by ordering that:

- a. Incumbent LECs must offer unbundled access to subloops necessary to access wiring at or near a multiunit customer premises, including the Inside Wire Subloop, *i.e.*, all incumbent LEC loop plant between the MPOE at a multiunit premises and the point of demarcation, regardless of the capacity level or type of loop the requesting carrier will provision the customer.
- b. Unbundled access must be provided at **any** technically feasible accessible terminal at or near the multiunit premises, including but not limited to, a pole or pedestal, a network interface device, the MPOE, the single point of interconnection (“SPOI”) or a feeder distribution interface.
- c. A requesting carrier accessing a subloop on the incumbent LEC’s network side of the NID obtains the NID functionality as part of the subloop.
- d. Upon notification by a requesting carrier that interconnection is required through a SPOI, an incumbent LEC is required to provide a SPOI at multiunit premises where the incumbent LEC owns, controls or leases the wiring at such premises.⁶

IV. Responses to the October 10, 2003 Procedural Order

1. Discuss the manner in which the FCC’s TRO resolves Cox’s concerns about Qwest’s Cable, Wire and Service Termination Policy (“CWSTP”) tariff and Cox’s requests: (a) that the Commission require Qwest to modify its Cable Wire and Service Termination Policy tariff on a going-forward basis only to eliminate its potential anti-competitive effects; (b) “that the existing Qwest tariffs will act to perpetuate problems with Competitive Local Exchange Carrier (“CLEC”) access to subloops”; (c) that three of the options offered in the CWSTP tariff interfere with CLEC access to MTE/MDU tenants and increase the cost of access; and (d) the MPOE should be located and configured in such a manner as to allow ready and easy access to the MPOE.

Cox indicated that the TRO did not resolve its concerns regarding Options 2 and 3 in Qwest’s CWSTP tariff. Cox indicated that the TRO did not address Cox’s position that the MPOE should be located and configured in such a manner as to allow ready and easy access to the MPOE. Cox believes that the Commission need only address Options 2 and 3 on a going

⁵ See In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et. al., CC Docket No. 01-338 et. al., Report and Order and Order on Remand and further Notice of Proposed Rulemaking, (Rel. August 21, 2003).

⁶ See TRO at paras. 346-50; 47 C.F.R. Section 51.319(b)(2).

forward basis and in a manner that is applicable to all carriers that may install campus wire. Cox notes that this position is consistent with Qwest's agreement to modify its CWSTP tariff to eliminate options 2 and 3 provided that (i) carriers retain the ability to offer additional points of presence and (ii) that the rules apply to all carriers and competitors.

Qwest reiterated its agreement contained in its Response to Staff's Information Request dated August 30, 2003 that it would eliminate Options 2 and 3 subject to the conditions: (1) that carriers retain the ability to offer additional points of presence provisioned at the request and expense of the customer, and (2) that rules proposed will apply to all carriers and competitors doing business in Arizona to ensure competitive neutrality, as well as to avoid unfairly disadvantaging any category of telecommunications carrier.

AT&T states that it is not possible to respond to Cox's vague and unsupportable claims and accusations. **AT&T** further indicated that without specific example of what issues Cox is attempting to address, it cannot determine if they are legitimate or how to address them.

2. Does Cox's position conflict with any portion of the FCC's ruling.

Cox does not believe that its position conflicts with any portion of the FCC's ruling.

AT&T responds that Cox's position that Options 2 and 3 be eliminated does not conflict with the TRO, is misleading. **AT&T** argues that while the TRO does not prohibit elimination of Options 2 and 3, **AT&T** suggests that there is language that arguably permits Options 2 and 3. The FCC gave premise owners the **option** of having the demarcation point moved to the MPOE and it did not require that the demarcation point be moved to the MPOE because it would deny CLECs the ability to access subloops within a premise. **AT&T** also notes that premise owners have no obligation to provide reasonable and non-discriminatory access to a MTE/MDU. CLECs would not be able to access those customers. For these reasons, **AT&T** believes that the FCC made the correct decision in not requiring that the demarcation point be located at the MPOE.

3. Whether it is necessary to continue with this docket in light of the FCC's TRO.

Cox believes that this docket can be closed if the Commission opens a rulemaking to address elimination of Qwest's Options 2 and 3 on an industry-wide basis.

Qwest agrees that if the Commission opens a rulemaking docket with proposed rules that apply to all carriers in a competitively neutral manner that this docket can be closed.

AT&T believes that unless Cox can provide real world examples that demonstrate that the Qwest CWSTP tariff is unreasonable this docket should be closed. **AT&T** reiterates that current FCC rules require CLECs be provided access to subloops and that subloops be priced at TSLRIC. If the MPOE and the demarcation point are moved to the property line and the premise owner owns all the wire from the demarcation point to the units, CLECs will be required to negotiate with the premise owner who has no obligation to provide access and is able to charge

any amount for access. In addition, the FCC has indicated that the choice of where the demarcation point is located is up to the premise owner.

4. If the Commission should continue to pursue the matter, what issues need to be addressed and how they should be resolved.

Cox recommends that the Commission open a rulemaking docket to allow carriers the opportunity to comment on the elimination of Options 2 and 3 and any other appropriate wire termination rules. It also asks that the Commission initiate a rulemaking to address appropriate MTE/MDU wire termination options that would apply to all carriers.

Qwest recommends that the rulemaking docket should focus on all telecommunications carriers on an industry-wide basis, and ensure that access to MTEs/MDUs is available in a fair, equitable and non-discriminatory manner. Qwest does not believe that the docket should address the elimination of Options 2 and 3 and any other appropriate wire termination rules, as suggested by Cox. Qwest believes that a rulemaking would allow the parties to file testimony and for the Commission to hold evidentiary hearings so that all positions can be thoroughly examined.

AT&T stated that it understood that this matter was opened to examine Qwest's tariff and that a rulemaking is not necessary to determine whether the tariff is unreasonable. AT&T stated that it has not formulated a position on whether Options 2 and 3 are unreasonable because the tariff applies to premise owners. AT&T notes that Options 2 and 3 do not appear to conflict with any FCC order and if Qwest owns the facilities CLECs will be able to access those facilities on an unbundled basis. Finally, AT&T believes that Cox's proposal conflicts with the rights provided to CLECs by the federal Act and the FCC.

V. Recommendations

Staff believes that critical issues are associated with where the MPOE/demarcation point ought to be located and what criteria are used to determine where it is located. Staff is concerned that local exchange carrier policies (both Qwest and CLECs) concerning the placement MPOEs and the location of the demarcation point could affect the ability of end users to take advantage of a competitive local telecommunications market.

Staff believes that if wiring from the property line to the individual units is owned by the property owner, there is no requirement that the premise owner provide access to that wiring to more than one LEC. If all new buildings have the demarcation point at the property line, the property owners will have the ability to deny LECs access to their tenants and thereby eliminate any benefit that a competitive local market may provide those customers. Therefore, a Commission decision that establishes that the MPOE/demarcation point be located at the property line may run counter to the Commission goal of local exchange service competition.

Staff is also concerned that LECs may enter preferred carrier agreements with property owners that effectively deny access to end-users by carriers other than the preferred carrier. Qwest, because of its unbundling requirements, must provide access to any wire it owns or

controls. CLECs on the other hand **may** not have that obligation. Therefore, any time that a CLEC convinces a premise owner to locate the MPOE/demarcation point at the property line, those customers may be harder for other local exchange service companies to reach.

Another competitive issue that arises is what happens when a premises owner enters in to an agreement with a local exchange company that provides for the installation of the inside wiring by the CLEC at no or reduced cost to the premise owner in exchange for, say, the CLEC becoming the "preferred carrier" in that building and an agreement to allow other carriers to use the inside wire at very high rates or not at all. While this arrangement may benefit the CLEC and the premise owner, its existence is a detriment to the end user. Potential choices have been eliminated.

Under the current CWSTP tariff a premise owner has two choices that would be eliminated if Cox's proposal is adopted. Each of these options provides the premise owner with alternatives that are cheaper to the owner than having to install all the wiring from the MPOE or having to wire an entire building.

- a. Under **Option 2** (which is not available for single tenant buildings), the premises owner may choose to have Qwest terminate *at common areas throughout buildings* at mutually agreed to locations.
- b. Under **Option 3** (which is also not available to single tenant buildings), Qwest will terminate facilities at mutually agreeable locations *within each individual space/units* within 12" of the cable/wire entry.

Rather than a rulemaking, Staff recommends that a Notice of Inquiry be commenced in this docket to gather information on the effect that the elimination of Options 2 and 3 from Qwest's CWSTP tariff or the elimination of similar activities by CLECs may have on the ability of end-users to take advantage of a competitive local exchange service market. Staff would also recommend that the NOI gather information on the implementation of preferred carrier agreements by local exchanger companies and how these preferred carrier agreements affect an end-user's ability to obtain service from a competitive carrier.

At this point in time, Staff believes that the MTE/MDU issue is inextricably linked to the installation of new facilities and thus to the preferred carrier agreements local exchange companies enter into with premise owners or property developers. Such agreements could have significant effects on how facilities are installed. Any examination of the MTE/MDU issue should address how new facilities are placed and how preferred carrier agreements can affect that placement in order to provide the Commission with a complete picture of the issues surrounding MTEs/MDUs.