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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

OCT 30 2002

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IN THE MATTER OF 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

**QWEST COMMUNICATIONS, INC. REPLY COMMENTS TO COX ARIZONA
TELCOM'S INITIAL COMMENTS ON MTE/MDU ACCESS**

Qwest Communications, Inc., through undersigned counsel, hereby provides this reply to Cox Arizona Telcom's ("Cox") initial response to Staff's information request concerning MTE/MDU access.

DISCUSSION

In its response to Staff's information request, Cox provides quotes from FCC decisions in support for its contention that Qwest's current CWSTP is anti-competitive. Qwest submits that these quotes are taken out of context, and fail to alert the reader of the FCC's final determination on the issues before it, after carefully balancing the various competing interests of telecom providers. For example, Cox asserts that the FCC made a "clear determination that incumbent LECs such as Qwest have used the MTE chokepoint as a means to severely inhibit competition" in WT Docket No. 99-217, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*. However, the FCC made no such "clear determination." Rather, it stated that the evidence showed that LEC control of inside wire has hindered development of

1 facilities based providers, but chose not to act because of the impact to non-facilities based
2 carriers. The FCC declined to mandate a uniform demarcation point at the MPOE for just these
3 reasons, stating in its First Report and Order and Further Notice of Proposed Rulemaking in WT
4 Docket No. 99-217:

5 In the absence of convincing evidence that the benefits to one
6 group of competitors would significantly outweigh the harms done
7 to the other, we find that the best course is to continue to leave the
8 choice in the first instance to the building owner.

9 In making the assertion that Qwest's CWSTP is anti-competitive, Cox fails to recognize –
10 or chooses to ignore – the existence of other competitors, and the impact its proposed MTE/MDU
11 policy will have on competition *as a whole*, not just on competition between itself and Qwest.
12 Further, in regards to location of the demarcation point, the FCC noted that, "...establishing the
13 demarcation point at the MPOE would disadvantage competitive LECs that rely on leasing
14 unbundled loops, including most DSL providers, by limiting the availability of the inside wire as
15 part of the loop element." This is a significant point since a large portion of MTE/MDU
16 scenarios will involve office complexes that are a major market for DSL providers.

17 Cox's assertion that Qwest's CWSTP tariff is inconsistent with the FCC's MTE Order and
18 Telecom Act of 1996 is without merit. Qwest's current Cable Wire and Service Termination
19 Policy is in compliance with FCC rules and its Arizona Tariff. The CWSTP, along with other
20 Qwest product offerings such as Intra Building Cable (IBC) and Campus Wiring, offer all CLECs
21 access to existing facilities at MTEs in a fair and equitable fashion and in a non-discriminatory
22 manner that ensures equal and competitive market opportunities. Additionally, the CWSTP tariff
23 exists across Qwest's territory, including Arizona, where it was reviewed and approved by state
24 commissions prior to institution. More importantly, the CWSTP is consistent with the FCC's
25 determination that it is property owners – not telecommunication service providers – who are
26 responsible for choosing the internal infrastructure which best fits their needs.

1 **COX'S PROPOSED RULES**

2 There are numerous points within Cox's proposed rules that Qwest must take issue with.
3 Qwest must again reiterate that Cox's proposed rules are single-mindedly concerned with
4 advantaging itself, at the cost of property owners and other carriers. This position is one with
5 which Qwest disagrees. In addition, the FCC has already clearly defined an Incumbent LEC's
6 obligations when it comes to reconfiguring an existing MPOE/Demarc.

7 Provisions within Cox's proposed rules seek to impose requirements on not only other
8 carriers, mainly the incumbent LECS, but on property developers as well. For example, in Rule
9 1, Cox states that "...entrance facilities must include sufficient additional conduit from the
10 property line to the MPOE/Demarc to allow access for subsequent providers without the need to
11 retrench or disrupt the property." Cox is asking that expenses be incurred by either the ILEC or
12 the property owner for additional facilities that may or may not ever be needed or used. In
13 addition, Cox proposes that "...the MPOE/Demarc should include adequate floor and wall space
14 to allow a certain number of subsequent providers to install equipment." Cox is in effect asking
15 the property developer to build not to suit his/her needs or budgets, but to suit the needs of
16 potentially interested telecommunications providers that may never elect to serve a given
17 property.

18 Regarding Rules 2, 3, 5, 6, 7, 8 and 9, Qwest is already under obligation to move an
19 existing MPOE/Demarc should a property owner so request it. These processes are well
20 established and as with all construction that Qwest may undertake, it is done within the
21 parameters of accepted industry standards. These rules are entirely unnecessary.

22 In addition, Rule 7 states that, "A utility cannot be required to relocate its MPOE or
23 Demarc where to do so would have an anti-competitive effect." The implementation of this rule
24 alone would preclude the implementation of the rest of Cox's proposed rules! The FCC clearly
25 recognized that a requirement for a MPOE/Demarc architecture, such as that proposed by Cox,
26 would serve to advantage facilities based carriers at the expense of carriers leasing facilities

1 and/or using unbundled elements. To disadvantage such a large segment of the
2 telecommunications industry clearly amounts to discriminatory and anti-competitive behavior.
3 On this basis, the FCC has previously declined to make a ruling on this issue, leaving the final
4 determination as to the MPOE/Demarc architecture in the hands of the property owner.

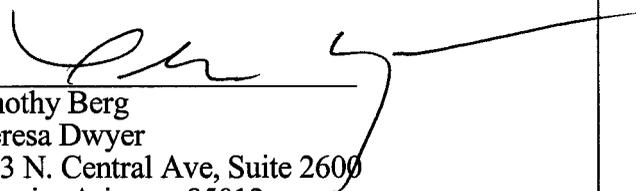
5 In response to Question number 14, Cox states that the Commission should suspend
6 options 1, 2, and 3 of Qwest's current CWSTP tariff "as soon as possible". Cox goes on to state
7 that the Commission should open a rulemaking concerning MDU/MTE issues. Qwest opposes
8 Cox's proposal concerning Qwest's current tariff for several reasons. First, it radically alters the
9 current options available for property owners without any further evidence or showing beyond
10 Cox's comments. The record in this proceeding does not warrant this action, since there are two
11 parties - Qwest and AT&T, that oppose Cox's MTE/MDU proposal. If the Commission
12 determines that a rulemaking proceeding is warranted, then each party should have the
13 opportunity to present additional evidence in support of its position, including the continuation of
14 existing practices. Second, adopting Cox's proposal to dispense with Options 1-3 prior to a
15 hearing would deny property owners the opportunity to provide input on this matter. As pointed
16 out in Qwest's comments, the Commission should actively seek to obtain input from this
17 important constituency prior to adopting any radical changes from the existing policies that
18 property owners are familiar with and have operated under for a number of years.

19 CONCLUSION

20 If the Commission determines that a further examination of these issues is necessary,
21 Qwest contends that only a uniform policy which is applicable to all carriers, and allows for
22 negotiation with property owners as to the placement of a demarcation point, will be consistent
23 with the FCC's previous determination that building owners should be able to choose what type
24 of telecommunication infrastructure configuration is the most appropriate for any specific project.

1 DATED this 30th day of October, 2002.

FENNEMORE CRAIG, P.C.

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