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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

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

Arizona Corporation Commission  
**DOCKETED**

AUG 30 2002

DOCKETED BY *cm*

**RESPONSE TO STAFF'S INFORMATION REQUEST**

**INTRODUCTION**

At its November 16, 2001 Open Meeting to consider the Emerging Services Recommended Order, the Commission discussed what the policy should be relative to the location of the demarcation between Qwest's network and the facilities controlled by the premise owner. The Commission determined that it should address the issue in the context of a proceeding that would apply to all telecommunication companies, and not just Qwest. The Commission instructed Staff to open a proceeding to address this issue. On April 12, 2002, Staff requested that a generic docket be opened, and filed a Request for Procedural Order in order to obtain certain information from interested parties.

**SUMMARY**

At divestiture, the Federal Communications Commission, (FCC) deregulated Inside Premises Wire beyond the Network Interface Device. Subsequently, in 1987, Qwest, then US West, chose to install all facilities and services at a Minimum or Main Point of Presence (MPOP). This meant the installation of facilities, services and the network interface, or demarcation point,

1 would be at a single point somewhere in a building (such as the basement) or on the property. In  
2 1990 the FCC issued Docket 88-57 which allowed for options in serving multi-tenant buildings  
3 with either the RBOC or property owner designating the location of the demarcation point. In an  
4 effort to accommodate both provisioning requirements and property owners concerns, Qwest  
5 developed its current Cable, Wire, and Service Termination Policy (CWSTP).

6 Under Qwest's current CWSTP, Qwest will place and maintain regulated cable/wire and  
7 services to a point of demarcation designated by the property/premises owner or authorized  
8 responsible party. When new facilities are required, the property owner is responsible for making  
9 the choice as to how his/her premises will be provisioned. There are four options the multi-tenant  
10 premises owner may choose from when having their property provisioned<sup>1</sup>

11 These four options cooperatively address the varying field conditions, provisioning  
12 requirements, and property owner preferences that may impact the provisioning of service to a  
13 given location. It is Qwest's position that its current CWSTP, along with other product offering  
14 such as Intra-Building Cable (IBC) and Campus Wiring, offer all CLECs access to existing  
15 facilities at MTEs in a fair and equitable fashion and in a non-discriminatory manner, thus  
16

17 <sup>1</sup> **Option 1:** MTE terminals identified as Option 1 are the equivalent of an MTE network interface device ("NID").  
18 An MTE NID is defined as a terminal that is simultaneously the Minimum Point of Entry ("MPOE") and the  
19 demarcation point where Qwest ownership and control ends and the property owner's ownership and control begins.  
20 MTE NID access may be obtained at the protector field as well as at the customer's inside wire appearance.

21 **Option 2:** Option 2 sets the demarcation point at the floor level in a multi-story building. Qwest owns and maintains  
22 riser cable from the floor level back to the central office. The same architecture could apply at trailer parks or  
23 marinas, etc. Option 2 typically provides a readily accessible cross connect field for direct MTE terminal access at  
24 the MPOE. Qwest, in most cases, has inventories of the Qwest-owned inside wire extending beyond the MTE  
25 terminal to the network demarcation point NID. Option 2 MTE terminal access may be obtained at the MPOE  
26 protector field or at the floor level NID.

27 **Option 3:** In option 3, the demarcation point is located either in a suite or an apartment unit. Qwest owns and  
28 maintains all wire and equipment from the suite or unit back to the central office. Option 3 MTE terminals typically  
29 consist of terminals at the MPOE that are hard-wired and contain no readily accessible cross-connect field. The  
30 exception would be large buildings and high rise buildings. Prior to the development of direct CLEC access, Qwest-  
31 owned and controlled inside wire for Option 3 MTE terminals was not always inventoried in provisioning and  
32 maintenance databases. Option 3 MTE terminal access may be obtained at the MPOE protector field as well as at the  
33 customer cross-connect of Qwest's owned and controlled inside wire.

34 **Option 4:** Option 4 provides a MPOE for campus environments. These terminals are placed near the property line  
35 of a campus environment and are detached from MTE buildings usually resting on a separate pad on provided rights  
36 of way. Access to Option 4 terminals is provided through Field Connection Point ("FCP") and collocation processes.

1 ensuring equal and competitive market opportunities. As such, Qwest believes that changes to  
2 Qwest's current policy or tariffs regarding MTE/MDU access are unnecessary. Should this  
3 Commission decide that Qwest's policy should be changed, it is Qwest's position that the parties  
4 to this proceeding be required to file testimony and that an evidentiary hearing be held so that all  
5 positions can be thoroughly examined.

6 Qwest Corporation, through counsel undersigned, hereby submit its Response to Staff's  
7 Information Request as follows:

8 **STAFF'S INFORMATION REQUEST**

9 **1. Do you believe that the Commission should establish a statewide policy for providers**  
10 **that requires that the Minimum Point of Entry and the demarcation point be located**  
11 **at the same place near the property line? Please explain.**

12 No, Qwest would be opposed to the Commission establishing a policy regarding a  
13 Minimum Point of Entry such as that proposed by Cox. However if such a policy were to  
14 be established by the Commission, Qwest believes that it should be a uniform state-wide  
15 policy applicable to all carriers, not just Qwest as the ILEC, and implemented on a  
16 prospective, going-forward basis only. Any policy adopted by the Commission should  
17 allow the MPOE to be established at all new developments at or near a property line  
18 whenever possible as suggested or at an appropriate location as negotiated with the  
19 property owner.

20 **2. Do you believe that Qwest's tariff should be modified so that all new Qwest entrance**  
21 **facilities to MTEs and campus properties (MDUs) will have the Minimum Point of**  
22 **Entry and the demarcation point at the same place near the property line? Why or**  
23 **why not?**

24 No, Qwest's tariff should not be modified per Cox's proposal. It is Qwest's  
25 position that there should be a uniform policy for all carriers and that such a policy would  
26 allow for negotiations with the property owner as to the placement of an MPOE. Any

1 change in the existing policy should be implemented either through a rulemaking  
2 applicable to all providers, or by requiring all providers to file the same generic language  
3 in their tariffs.

4 However, in response to Cox's concerns, Qwest would agree to a modification of  
5 its existing CWSTP tariff, which eliminates Options 2 and 3 of the CWSTP while  
6 retaining Options 1 and 4. This would in effect, eliminate Qwest ownership of inside  
7 wiring and establish a MPOE at the property line, as proposed by Cox, or at an MTE  
8 (Multi-Tenant Environment) NID. This solution allows for a minimum point of entry as  
9 championed by Cox, while still allowing for needed flexibility and property owner input  
10 as to the provisioning of services.

11 Qwest would support the elimination of Options 2 and 3 on a going forward basis,  
12 subject to the following conditions:

13 1. Carriers must be able to retain the ability to offer Additional Points of Presence  
14 (APOP), provisioned at the request and expense of the customer. This will ensure the  
15 availability of advanced services.

16 2. To ensure competitive neutrality and avoid unfairly disadvantaging any category  
17 of telecommunications carrier, these rules as proposed would apply to all carriers and  
18 competitors doing business in the state of Arizona.

19 Qwest believes that the needs and desires of the property owner must be taken into  
20 account. Of consideration is the fact that logistics, geography, zoning requirements,  
21 safety concerns, security issues and not least of all, esthetics should play a role as to where  
22 the MPOE will be located. To state unequivocally that the MPOE should always and  
23 could always be located at the same place near the property line is unrealistic at best.

24 **3. Do you believe that the Cox proposed policy should apply, on a going forward basis**  
25 **or with significant reconfiguration only, if the Commission adopts it? How would**  
26 **you define significant reconfiguration?**

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If the MPOE-only policy as proposed by Cox was to be adopted by the Commission, it should only be on a prospective, going-forward basis. However, as stated in our responses to # 1 and # 2, Qwest believes that a demarcation point negotiated with the property owner, based on the needs of the specific situation, must still be an available option. Qwest would define a significant reconfiguration as a situation where the property owner requests and pays for the demarcation point to be moved to the property line.

4. **Do you believe that the Cox proposed policy would lead to further development of competition in Arizona, if the Commission adopts it? Please explain.**

The proposed policy would disadvantage some carriers while giving an advantage to others, but it is impossible to tell the effect it may have on competition. In theory, establishing the demarcation point at the MPOE would allow all facilities-based carriers the opportunity of interconnecting to inside wiring, which would be under the control of the property owner, at the same point and presumably under the same terms. This could be seen as equitable and non-discriminatory and could indeed further competition.

However, establishing the demarcation point at the MPOE could in reality disadvantage CLECs relying on leased unbundled loops. The loop, by definition, would now end at the demarcation point/MPOE. This limits the availability of the inside wire as part of the loop element, and would severely impact CLECs providing advanced services. The CLECs are now forced to negotiate with not only the ILEC, but the property owner as well. This could be seen as a barrier to competition. In addition, there is no guarantee that the property owner will grant access in any event.

The FCC declined to mandate a uniform demarcation point at the MPOE for just these reasons, stating in its First Report and Order and Further Notice of Proposed Rule Making in WT Docket 99217, FCC 00-366 paragraph 47, *"...In the absence of convincing evidence that the benefits to one group of competitors would significantly*

1 *outweigh the harms done to the other, we find the best course is to continue to leave the*  
2 *choice in the first instance to the building owner."*

3 **5. What property rights issues are raised by requiring the demarcation for new MTEs**  
4 **be at the MPOE at the edge of the property? How do you believe that these issues**  
5 **should be resolved?**

6 The Commission should solicit input from property owners and developers before  
7 adopting any change in policy on this issue. As previously stated, Qwest believes strongly  
8 that the property owners needs and desires must be taken into account when the decision  
9 is made as to where telecommunications plant is deployed. Property rights issues  
10 involved are logistics, geography, zoning requirements, safety concerns, security issues  
11 and esthetics and should be taken into account when determining a demarcation point.  
12 Not doing so could lead to liability issues for the property owner because of the safety and  
13 security concerns and legal liability for non-compliance with zoning requirements.

14 In addition, the Commission must address the concerns of not only the incumbent  
15 carrier and facility-based carriers but of carriers that rely on unbundled network elements,  
16 non-facility based carriers. As stated in Question #4, there is legitimate concern that the  
17 type of MPOE architecture being proposed by Cox will indeed disadvantage carriers  
18 utilizing unbundled loops (i.e., DLECs).

19 **6. What property right issues are raised by requiring the demarcation for reconfigured**  
20 **MTEs be at the MPOE at the edge of the property? How do you believe that these**  
21 **issues should be resolved?**

22 Multiple issues could arise from imposing a requirement that existing demarcation  
23 points for MTEs be reconfigured. The FCC already requires Qwest, or any other ILEC for  
24 that matter, to move a demarcation point to the MPOE, but only at a property owners'  
25 request. If the policy as proposed by Cox is applied on a going forward basis, then  
26 property owners will simply have fewer options than they have today. However, if the

1 Commission were to require the demarcation to be moved to the MPOE at the edge of the  
2 property for existing locations, then the deal originally agreed to by the property owners  
3 will be changed, i.e. they will be forced to accept responsibility for ownership and  
4 maintenance of cabling and wiring on their premises.

5 Customers will generally do what is easiest for them. Unless they are  
6 experiencing difficulties, they will be reluctant to change whatever arrangement they  
7 currently have, particularly when the responsibility for maintaining that arrangement  
8 belongs to the ILEC and changing the existing arrangement would result in increased  
9 costs for the customer. The logistics involved with approaching the property owner or  
10 respective agent for each and every MTE/MDU would be staggering. Once an  
11 owner/agent is contacted, what if they refuse? Is the Commission willing to force the  
12 transfer of ownership? Will Qwest be asked to relinquish assets? It is Qwest's belief that  
13 if the MPOE-only policy is established, it can only be implemented on a going forward  
14 basis for new developments, while "grandfathering" existing MTE arrangements.

15 **7. Identify all issues that you believe the Commission would need to address if it were**  
16 **to adopt the Cox proposed MTE/MDU policy?**

17 Any new MPOE rule should be a uniform state-wide policy that will apply to all  
18 carriers equally. A corollary should be that no carrier should be permitted to buy the  
19 owner's Intra-Building Cable (IBC). To do so could be seen as a circumvention of the  
20 basic rule. Qwest believes the Commission would be faced with a multitude of issues  
21 should they choose to establish the MPOE-only policy such as that proposed by Cox, not  
22 the least of which would be the negative impact to non-facilities based carriers and  
23 DLECs. In addition, the potential restrictions on the delivery of certain services, mainly  
24 enhanced services such as DSL, could be seen as a barrier to competition.

25 **8. Do you believe that Qwest's current Cable, Wire and Service Termination Policy**  
26 **tariff is anti-competitive? Why or why not?**

1           No, Qwest's current Cable Wire and Service Termination Policy (CWSTP) tariff is  
2 not anti-competitive. It is in compliance with FCC rules and has been approved by this  
3 Commission. The CWSTP, along with other product offerings such as IBC and Campus  
4 Wiring, offer all CLECs access to existing facilities at MTEs in a fair and equitable  
5 fashion and in a non-discriminatory manner ensuring equal and competitive market  
6 opportunities. In addition the CWSTP tariff exists across Qwest's territory, including  
7 Arizona, where it was reviewed and approved by state commissions prior to institution.

8 **9. Do you believe that Qwest's current Cable, Wire and Service Termination Policy**  
9 **tariff impose any barriers to CLECs in reaching the tenants of MTE/MDUs? Why**  
10 **or why not?**

11           No, Qwest's CWSTP does NOT impose barriers to CLECs in reaching the tenants  
12 of an MTE. CWSTP offers the property owners a choice on how their property can be  
13 served when it comes to telecommunications service and lets the property owner dictate  
14 the demarcation point and cabling arrangements. And as previously stated, Qwest and the  
15 FCC believe that the decision is best left with the property owner.

16           Cox has cited instances where a property owner has refused to allow Cox to place  
17 facilities in order to reach a demarcation point within a building or elsewhere on a  
18 property. Again, it has to be made clear that this is not Qwest or Qwest's CWSTP policy  
19 that is imposing a barrier, it is the property owner who is well within his rights to dictate  
20 how his holdings are impacted. It should be noted that under the Cox proposal, control of  
21 inside wire would be placed solely in the hands of the property owner, thus creating a  
22 greater potential for just such a bottleneck, which could serve to diminish competition.  
23 The property owner can and may unilaterally select a carrier with whom they wish to deal  
24 to the exclusion of all others. In the instance where Qwest controls the inside wire, Qwest  
25 offers CLECs options such as its IBC product offering to obtain the same end results, i.e.  
26 service to the end user.

1           It must also be noted that there are instances in Arizona where Qwest is the carrier  
2 denied access to tenants of MDUs/MTEs. There are several properties within Arizona  
3 that because of exclusive contracts between the developers and Cox, Qwest has no  
4 facilities on said properties and no way to serve tenants that request Qwest service.  
5 Federal rule 47 CFR 64.2500 provides that no common carrier shall enter into any  
6 contracts that restrict the right of any commercial MTE owner to permit any other  
7 common carrier to access and serve commercial tenants on that premises. With the above  
8 mentioned situation in mind, Qwest would be a proponent of extending this rule to apply  
9 to residential MTEs as well.

10 **10. Please discuss current FCC requirements pertaining to demarcation points at**  
11 **MTE/MDU dwelling.**

12           The FCC rules state that the demarcation point for multi-unit structures is to be  
13 determined "in accordance with the local carrier's reasonable and non-discriminatory  
14 standard operating practices."<sup>2</sup> Qwest's standard operating practices include its current  
15 CWSTP which has been in place since 1987.

16           In its First Report and Order and Further Notice of proposed Rulemaking in WT  
17 Docket No. 99-217, the FCC states that after seeking comment with respect to modifying  
18 the Commission's demarcation point rules, establishing a uniform demarcation point at  
19 the MPOE, it determined that, "...the financial burden of moving the demarcation point to  
20 the MPOE and the fact that it may hinder deployment of facilities by carriers, including  
21 small entities, which utilize unbundled local loops outweigh the potential benefits of  
22 adopting this proposal."<sup>3</sup>

23  
24 <sup>2</sup> 1990 Demarcation Point Order and Further NPRM Section 68.3(b)(1) states, in relevant part, "[I]n multi-unit  
25 premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local  
26 carrier's reasonable and non-discriminatory standard operating practices." 47 C.F.R. Section 68.3(b)(1). 1997  
Demarcation Order clarified that this reference was to practices in effect on August 13, 1990, 12 FCC Rcd at 11914:  
47 C.F.R. Section 68.3(b)(1).

<sup>3</sup> Competitive Networks First Report and order, at paras. 52-53

1 The FCC took the following action to promote access to telecommunications wiring by  
2 competing carriers:

3 (1) Clarified that the Commissions rule on demarcation points govern control of  
4 inside wiring and related facilities for purposes of competitive access and  
5 control of the facilities in question for purposes of installation and  
6 maintenance.

7 (2) Required that ILECs conclude negotiations with building owners to relocate a  
8 demarcation point to the MPOE within 45 days of a request to do so and  
9 submit to binding arbitration if the parties are unable to agree upon terms for  
10 the relocation.

11 (3) Required that ILECs fulfill their duty to disclose the location of a demarcation  
12 point, when not located at the MPOE, within 10 business days of a request.<sup>4</sup>

13 **11. Do you believe that Qwest's current policies and tariffs, and the policies and tariffs**  
14 **of other telecommunications carriers, operating in Arizona, are consistent with FCC**  
15 **requirements? Do you believe Cox's proposal is consistent with FCC requirements?**

16 Qwest's current policies and tariffs in Arizona are in compliance with FCC  
17 requirements regarding demarcation points at MTEs as discussed at length in the previous  
18 responses (Question #8 and #10). Qwest cannot comment on the policies of other  
19 telecommunications carriers. Cox's proposed policy doesn't differ significantly from  
20 options offered by Qwest's CWSTP, and as such would be consistent with FCC  
21 requirements.

22 **12. Do you believe that the Commission should establish a policy for existing locations?**  
23 **If so, what policy would you recommend the Commission adopt?**

24 Qwest does NOT believe that the Commission should establish a new policy for  
25

26 <sup>4</sup> Competitive Networks First Report and Order, Application of Demarcation Point rules to the Provision of  
Competitive Telecommunications Service, at paras. 43-52

1 existing locations. The relocation of existing demarcation points would give rise to legal  
2 and practical difficulties. As discussed in our response to Question # 6, incumbent LECs  
3 are already required to move demarcation points should a property owner request it. And  
4 again, it comes down to the fact that property owners should have a say as to how they  
5 will be served. If the Commission were to establish a new policy for existing locations,  
6 property owner rights should be considered in developing the policy.

7 It is Qwest's belief that if the MPOE-only policy is established, it can only be  
8 implemented on a going forward basis for new developments, while "grandfathering"  
9 existing MTE arrangements. If a property owner requests a relocation of the demarcation  
10 point, the new location must be consistent with the new policy.

- 11 **13. Please provide copies or citations for other regulatory authorities' decisions that**  
12 **address any of the issues raised by the Cox proposal. The decisions should include**  
13 **but not be limited to those decisions that address LEC obligations regarding the**  
14 **location and/or relocation of demarcation points, property rights and cost recovery**  
15 **that you believe would benefit the commission in its deliberations on this issue.**

16 First Report and Order and Further Notice of Proposed Rulemaking in WT Docket  
17 No. 99-217.

- 18 **14. Please provide your recommendation on the process and/or procedures that the**  
19 **Commission should use to reach a decision on the Cox proposal. Please include a**  
20 **recommended schedule including recommended dates.**

21 As noted in prior responses, Qwest does not believe that its existing CWSTP is in  
22 need of change. However, should the Commission feel that further examination of the  
23 issues is necessary, Qwest recommends that the parties to this proceeding file testimony  
24 and that a hearing be held prior to requiring a change in Qwest's tariff. Qwest believes  
25 that the Commission should specifically seek input and testimony from property owners,  
26

1 developers, and other parties, such as DLECS, who will also be impacted by the Cox  
2 proposal. Qwest recommends the following schedule:  
3 Intervenor Direct Testimony: October 18  
4 Staff Testimony: November 15  
5 Intervenor Rebuttal Testimony: December 13  
6 Hearing: January 8  
7 Discovery cut off: December 31

8 DATED this 30<sup>th</sup> day of August, 2002.

9 FENNEMORE CRAIG, P.C.

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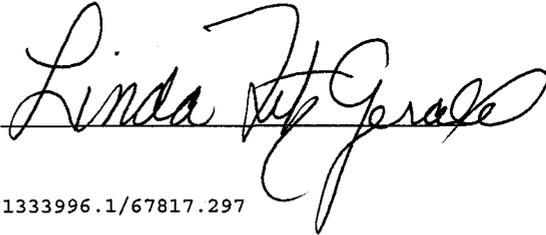
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