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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE INVESTIGATION INTO QWEST'S CABLE WIRE AND SERVICE TERMINATION POLICIES AND TARIFFS AND THE POLICIES AND TARIFFS OF OTHER TELECOMMUNICATIONS CARRIERS WITH RESPECT TO ACCESS TO MTE/MDU TENANTS.	)	Docket No. T-00000A-02-0280 AT&T'S ANSWERS TO QUESTIONS CONTAINED IN PROCEDURAL ORDER DATED MAY 29, 2002

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby file their comments in response to the questions contained in the Procedural Order dated May 29, 2002.

I. INTRODUCTION

AT&T has concerns with the focus of the questions contained in the Procedural Order. The questions focus on a Cox proposal that is ill-defined, making it difficult to respond. Furthermore, focusing on Cox's proposal inappropriately narrows the debate. Any rule on access must comply with the Telecommunications Act of 1996 and the Federal Communications Commission's ("FCC") implementing regulations. Access generally is obtained by AT&T and other competitive local exchange carriers ("CLECs") under an interconnection agreement or a Statement of Generally Available Terms and Conditions ("SGAT"), not Qwest's tariff. Qwest tariff should not be the focus of debate. Qwest is required to provide access consistent with the federal Act and the FCC's

implementing regulations. AT&T does not believe a rulemaking on access to tenants in a multi-tenant environment ("MTE") is necessary.

II. ANSWERS

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

No. Cox's proposal confuses the issue of Minimum Point of Entry ("MPOE") with the demarcation point. The two points are not necessarily the same.

In the FCC's *First Report and Order*, the FCC defined the network interface device ("NID") "as a cross-connect device used to connect loop facilities to inside wiring."[1] The FCC noted that "[w]hen a competitor deploys its own loops, the competitor must be able to connect its loops to the customers' inside wiring in order to provide competing services especially in multi-tenant buildings."[2] However, the FCC's definition proved inadequate.

The FCC modified the definition of the NID in its *UNE Remand Order*[3]

> We modify that definition to include all features, functions and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism. Specifically, we define the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as cross connect device used for that purpose.[4]

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[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶ 392, n. 852.
[2] *Id.,* ¶ 392
[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").
[4] *UNE Remand Order,* ¶ 233.

In the *UNE Remand Order* the FCC also modified the definition of the loop to extend from the distribution frame to the loop demarcation point at the customers premises.[5] The FCC found that "the demarcation point is preferable to the NID in defining termination point of the loop *because, in some cases, the NID does not mark the end of the incumbents' control of the loop facility.*"[6] The FCC concluded that "[w]here incumbents maintain ownership and control over a portion of the loop beyond the NID, the definition of the loop as set forth by the Commission in the *Local Competition First Report and Order* may not provide the competitor with actual access to the subscriber."[7]

Based on the FCC's definition, *the demarcation point is where the incumbent LEC's ownership and control over the loop ends.* This can be at the NID or a cross-connect beyond the NID. Therefore, the demarcation point cannot be established at the property line, unless this is the place where Qwest's ownership and control of the loop ends. This is a case-by-case analysis.

There are additional complexities. The FCC has defined subloops "as portions of the loop accessed at the terminals in the incumbents' outside plant. An accessible terminal is a point where technicians can access the wire or fiber within the cable without removing a splice case to reach wire or fiber within. These would include a technically feasible point near the customer premises, such as a pole or pedestal, the NID…, or the minimum point of entry to the customers premises (MPOE)."[8] Based on the FCC's definition of a subloop, a CLEC can gain access at the MPOE, which may or may not be

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[5] *Id.*, ¶ 167.
[6] *Id.*, ¶ 168 (emphasis added). The NID is defined as a cross-connect devise by the FCC. However, there may be other locations in a MTE where cross-connects may be located. For example, the NID may be located in a closet in a basement of a building where the distribution facilities terminate. There may be additional cross-connects between the NID and the tenant's inside wire (which is deregulated), and which serve as the demarcation point.
[7] *Id.*
[8] *Id.*, ¶ 206.

located at the property line, at the NID or at a cross-connect. The Commission cannot require the CLECs to gain access only at the MPOE, nor can it limit access to subloops at the MPOE.

The FCC stated that the parties may negotiate for a single point of interconnection ("SPOI"). "If the parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers"[9] However, the FCC "emphasize[d] that the principle in no way diminishes a carrier's right to access the loop at any technically feasible point, including other points at or near the customer premises."[10] It is obvious that Cox is free to negotiate for a SPOI. It is equally obvious that this does not affect other CLECs' rights to obtain subloops and access to Qwest's facilities at any technically feasible point.

After the release of the *UNE Remand Order,* the FCC released its *Competitive Networks Report and Order.*[11] The *Competitive Networks Report and Order* did essentially four things.

- First, we forbid telecommunications carriers from entering into contracts to serve commercial properties that restrict or effectively restrict the property owner's ability to permit entry by other carriers.

- Second, in order to reduce competitive carriers' dependence on the incumbent LECs to gain access to on-premises wiring, while at the same time recognizing the varied need of carriers and building owners, we establish procedures to facilitate moving the demarcation point to minimum point of entry (MPOE) *at the building owner's request,* and we require incumbent LECs to timely disclose the location of existing demarcation points where they are not located at the MPOE.

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[9] *Id.,* ¶ 226.
[10] *Id.*
[11] *Promotion of Competitive Networks in Local Telecommunications Markets,* First Report and Order and Further Notice of Proposed Rulemaking in Wt Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-96 and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366 (rel. Oct. 25, 2000) *("Competitive Networks Report and Order").*

- Third, we determine that under Section 224 of the Communications Act, utilities, including LECS, must afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and rights-of-way located in customer buildings and campuses, to the extent such conduits and right-of-way are owned or controlled by the utility.

- Fourth, we extend to antennas that receive and transmit telecommunications and other fixed wireless signals our existing prohibition of restrictions that impair the installation, maintenance or use of certain video antennas on property within the exclusive use or control of the antenna user, where the user has a direct or indirect ownership of leasehold interest in the property.[12]

Of importance to the instant discussion are the second and third bullets.

In the *Competitive Networks Report and Order*, the FCC discussed moving the demarcation point to the MPOE.[13] The FCC recognized that relocation of the demarcation point to the MPOE would limit the availability of the inside wire as part of the loop element and "would result in a decrease in the amount of wiring within a building that is available to competitive LECs as part of the loop, which by definition ends at the demarcation point."[14] Also, uniformly moving the demarcation point would raise legal issues regarding investments made by incumbent LECs.[15] Accordingly, the FCC declined to mandate a uniform demarcation point at the MPOE.

> In light of these concerns, we decline to mandate a uniform demarcation point at the MPOE. The record shows that although moving the demarcation point to the MPOE would reduce cost and facilitate deployment for competitive LECs that rely on their own facilities to reach MTEs, *it would increase costs and hinder deployment for carriers that rely on unbundled local loops.* In the absence of convincing evidence that the benefits to one group of competitors would significantly outweigh the harms to the other, *we find the best course is to continue the leave the choice in the first instance to the building owner.* [16]

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[12] *Id.*, ¶ 6 (footnotes omitted and emphasis added).
[13] *Id.*, ¶¶ 50-53. The MPOE is defined as "either the closest point where the wiring crosses a property line or the closest practicable point to where the wiring enters a multi-unit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply." *Id.*, ¶ 45, n. 104 and App. B (Revised Demarcation Point rules, 47 C.F.R. § 68.3 Demarcation point).
[14] *Competitive Networks Report and Order*, ¶ 51.
[15] *Id.*, ¶ 52.
[16] *Id.*, ¶ 53 (emphasis added).

Thus, it appears that the very point Cox raises -- moving the demarcation point to the MPOE on the property line in all cases – was rejected by the FCC.

The FCC also took several actions to clarify the building owners options. "First, we clarify that in all multiunit premises, the incumbent carrier must move the demarcation point to the MPOE *upon the premises owner's request.*"[17] Second, "[w]e hold that in order to further competition a request by a property owner to relocate the demarcation point to the MPOE must be dealt with in a reasonably timely and fair manner, so as not to unduly delay or hinder competitive LEC access. We therefore direct incumbent LECs to conclude negotiations with requesting building owners in good faith and within 45 days"[18] The FCC made it clear that *"[t]hese rules will apply as well to competitive LECs where they have installed or have had control of the inside wire."*[19] If the premises owner asks the LEC to identify the demarcation point, the LEC has 10 business days to do so. If the LEC fails to timely respond, it will be presumed that the demarcation point is located at the MPOE.[20] The FCC also made it clear "that to the extent incumbent LECs continue to exercise control over on-premises wiring, they must afford access to that wiring as a UNE at forward-looking prices."[21]

The FCC also addressed access to rights-of-way in an MTE. Access to rights-of-way are important because it permits a CLEC to deploy its own facilities in an MTE to the demarcation point.[22] The FCC concluded that under section 224 of the Act, an *incumbent* LEC must grant other telecommunications carriers access to poles, ducts,

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[17] *Id.*, ¶ 54 (emphasis added).
[18] *Id.*, ¶ 55.
[19] *Id.*, (emphasis added).
[20] *Id.*, ¶ 56.
[21] *Id.*, ¶ 58.
[22] *Id.*, ¶ 77. "To the extent that a new entrant is unable or does not desire the use of existing in-building wiring, it must obtain access to building conduit in order to install its own cables and wires." *Id.*

conduits and right-of-ways it owns or controls, "even though the incumbent LEC has no right under Section 224 with respect to the facilities of other utilities."[23] The FCC also concluded this obligation is "not limited by location or by how the utility's ownership or control was granted. Thus, to the extent a utility owns or controls poles, ducts, conduits, or rights-of-way within an MTE, the utility may not exercise its control in a manner inconsistent with Section 224 to impede competitive access."[24]

Cox's proposal simply is not necessary. Cox can obtain access at the MPOE, the NID or a cross-connect. It can ask Qwest to establish a SPOI. The recent cost case established a uniform price for all on-premises wiring, so where Cox decides to access on-premises wiring is not effected by the price it must pay. Cox's proposal limits options that CLECs have under FCC rules to access subloops at any technically feasible point. In fact, any attempt by a state commission to restrict the availability of the options available to CLECs under the FCC's rule would be preempted under federal law.

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

   No. *See* response to question 1.

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

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[23] *Id.*, ¶ 72.
[24] *Id.*, ¶ 76.

To the extent Cox suggests that the demarcation point at existing MTEs should be moved to the property line, see AT&T's response to question 1.

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.

No. Cox's policy could inhibit competition, as it limits the ability of a CLEC to pick the accessible point to obtain access to the Qwest network in an MTE and restricts access to subloops.

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

The building owner will own all on-premises wiring. CLECS will be required to negotiate the amount of payment with the building owner for access to on-premises wiring. The Commission has no jurisdiction over the building owner, which leaves the CLECs at the mercy of the building owner. The solution is to reject Cox's proposal.

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

Two general property rights are at issue: payment, if any, to Qwest for on-premises wiring that becomes the property of the building owner and subsequent LEC access to on-premises wiring now the property of the business owner. Cox assumes access to MTEs will be easier to obtain from the building owner and at less cost if the demarcation point is set at the property line. This assumption is not assured. As long as

Qwest owns or controls the on-premises wiring, it must provide access and subloops at cost-based rates.[25] The building owner does not have similar obligations.

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

Cox's proposal is ambiguous. Cox needs to more fully explain its proposal before AT&T can respond. However, AT&T has adequately explained the deficiencies of Cox's proposal based on the questions posed in the Procedural Order.

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

AT&T obtains access to MTEs through its interconnection agreement, not Qwest's tariff. It expresses no opinion on the tariff.

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

See AT&T's response to question 8.

10. Please discuss current FCC requirements pertaining to demarcation points at MDU/MTE dwellings.

See AT&T's response to question 1.

[25] *Competitive Networks Report and Order,* ¶ 58.

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

AT&T has not reviewed the tariffs of other carriers and, therefore, expresses no opinion. Cox's proposal is not consistent with FCC requirements.

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

No. The FCC's requirements, if properly interpreted and enforced, including access at any technically feasible point and subloops at cost-based rates, provide adequate access.

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

See AT&T's response to question 1.

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

No rule is necessary. The Staff should recommend that the proceeding be terminated.

Dated this 28th day of August, 2002.

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CERTIFICATE OF SERVICE
(Docket No. T-00000A-02-0280)

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