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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

JUL 16 2004

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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

PROCEDURAL ORDER

BY THE COMMISSION:

On October 9, 2001, Cox Arizona Telecom, LLC ("Cox") filed Exceptions to the Recommended Order on "Emerging Services" in the Arizona Corporation Commission's ("Commission") proceeding on Qwest Corporation's ("Qwest") Section 271 application. In its exceptions, Cox stated the following:

- a. Cox asked 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. Cox indicated that one of its key concerns "is that the existing Qwest tariffs will act to perpetuate problems with CLEC access to subloops."
- c. Cox indicated that Qwest's Cable, Wire and Service Termination Policy provides four options for the configuration of new facilities at MDUs and MDU campus properties such as apartment complexes. Cox believes that three of the options interfere with CLEC access to MTE/MDU tenants and increase the cost of access.
- d. Cox urged the Commission to require Qwest to modify its tariff so that all new Qwest entrance facilities to MTEs and campus properties will have the Minimum Point of Entry and the demarcation point located at the same place near the property line.
- e. Cox's exceptions noted that although the Recommended Order concluded that Cox's request was not unreasonable, it did not adopt the proposal.

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

1 Commission determined that it should address the issue in the context of a proceeding that would
2 apply to all telecommunication companies and not just Qwest. The Commission instructed Staff to
3 open a proceeding to address this issue.

4 On April 12, 2002, Staff requested that a generic docket be opened, and filed a Request for
5 Procedural Order in order to obtain information from interested parties on fourteen different
6 questions.

7 By Procedural Order dated May 29, 2002, the Commission determined that a generic
8 investigation should be undertaken to aid and assist the Commission in evaluating Cox's proposal. In
9 Procedural Orders dated May 29, 2004, July 29, 2002, September 23, 2002, and December 4, 2002,
10 the Commission set a schedule for interested parties to file comments.

11 On January 30, 2003, Staff filed a Motion for Extension of Time to file its Report. Staff
12 stated that the Federal Communications Commission ("FCC") was considering some of the same
13 issues being investigated in this docket as part of the FCC's Triennial Review of Unbundled Network
14 Elements. Cox had requested that the FCC address issues related to inside wire sub-loop access, and
15 has indicated to Staff that if the FCC does not find in Cox's favor it may reconsider its position in this
16 docket.

17 By Procedural Order dated February 12, 2003, the Commission extended Staff's deadline to
18 file its Report until after the FCC's issuance of its *Triennial Review Order* ("TRO"). Other parties
19 were given an opportunity to file responsive comments to the Staff Report.

20 On September 5, 2003, Staff filed its Status Report, which summarized the FCC position
21 concerning subloops and Multitenant Premises Access and Network Interface Devices ("NIDs") in its
22 TRO, released on August 21, 2003. Staff recommended that the parties be given 30 days to comment
23 on the TRO findings regarding access to MTE/MDU tenants. Specifically, Staff requested
24 comments on whether the TRO addressed Cox's concerns that lead to opening the current docket and
25 whether it is necessary to proceed with this docket in light of the FCC's findings.

26 Cox notified the Commission that the FCC's TRO addressed some, but not all, of its concerns
27 regarding the issues it has raised. By Procedural Order dated October 10, 2003, Cox was ordered to
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1 file comments on whether the TRO resolved the concerns Cox had raised about Qwest Corporation's
2 Cable, Wire and Service Termination Policy tariff. Interested Parties were ordered to file Responsive
3 comments and Staff was ordered to summarize the comments and make recommendations concerning
4 further proceedings.

5 Cox, Qwest and AT&T filed comments. On January 12, 2004, Staff filed a Staff Report and
6 recommended that a Notice of Inquiry be commenced to gather information on the effect that the
7 elimination of Options 2 and 3 from Qwest's CWSTP tariff or the elimination of similar activities by
8 CLECs may have on the ability of end-users to take advantage of a competitive local exchange
9 service market. Staff also recommended that the NOI gather information on the implementation of
10 preferred carrier agreements by local exchange companies and how these preferred carrier
11 agreements affect an end-user's ability to obtain service from a competitive carrier.

12 Pursuant to Procedural Order dated February 25, 2004, a Procedural Conference to discuss
13 Staff's recommendations convened on March 8, 2004.

14 Staff explained that a NOI would provide a means for Staff to develop a list of questions to
15 gather information to determine if changes or new rules may be appropriate. One of Staff's greatest
16 concerns was learning how preferred carrier agreements, which are becoming more and more
17 prevalent, operate.

18 Cox stated that it initially raised its concerns after it had difficulties accessing customers in a
19 large complex in Phoenix. Cox explained it was concerned that similar situations could occur in the
20 future. It reported, however, that since it initially raised its concerns no other CLEC has raised
21 similar concerns or complaints and Cox itself has not run into the problem to any great extent since
22 then.

23 Despite its comments on the scope of the TRO, neither Cox, nor any other participant in this
24 docket believed that further inquiry in this docket is necessary or beneficial as the initial concerns
25 have subsided. The consensus of the parties was that a new docket should be opened for Staff's
26 investigation into the preferred carrier agreements. No party objected to closing the current docket.
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1 On March 2, 2004, the D.C. Circuit Court of Appeals issued a decision in *United States*
2 *Telecom Ass'n v. FCC*, Nos. 00-1012 et al., 2004 WL 374262 (D.C. Cir. Mar. 2, 2004) ("*USTA II*")
3 in which it vacated certain provision of the TRO and upheld others. No party raised a concern at the
4 March 8, 2004 Procedural Conference, that the USTA II decision had an impact on access to
5 subloops and Multitenant Premises NIDs.

6 IT IS THEREFORE ORDERED that the issues raised in the above-captioned docket having
7 been resolved, this docket should be administratively closed.

8 IT IS FURTHER ORDERED that Staff shall cause a new docket to be opened for the purpose
9 of pursuing a Notice of Inquiry into the use and operation of preferred carrier agreements in the local
10 telecommunications market.

11 DATED this 16 day of July, 2004.

12
13 
14 JANE L. RODDA
15 ADMINISTRATIVE LAW JUDGE

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17 this 16 day of July, 2004, to

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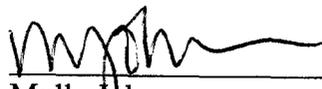
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By: 
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