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Arizona Corporation Commission

DOCKETED

MAY 17 2001

AZ CORP COMMISSION
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IN THE MATTER OF US WEST COMMUNI-
CATIONS, INC.'S COMPLIANCE WITH
§ 271 OF THE TELECOMMUNICATIONS
ACT OF 1996

Docket No. T-00000A-97-238

COX ARIZONA TELCOM, L.L.C.'S
COMMENTS ON PUBLIC INTEREST

Cox Arizona Telcom, L.L.C. ("Cox") submits these comments on the Public Interest requirement in this docket. FCC views

"the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this application. Another factor that could be relevant to our analysis is whether we have sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that this market is open to competition."

In the Matter of the Application of Verizon New England, Inc., et al. for Authorization to Provide In-Region InterLATA Services in Massachusetts, Memorandum Opinion and

1 Order, FCC 01-130, CC Docket NO. 01-9 (April 16, 2001), ¶ 233 (citations omitted). As
2 Qwest's own numbers attest, the CLEC penetration into the Arizona telecommunications
3 markets is still minimal. According to Qwest, CLECs have only 6.9% of all access lines in
4 the Qwest service areas, *including only 1.8% of all residential lines*. [Teitzel Ex. DLT-2C]
5 These minimal numbers indicate that any competition, particularly in the residential
6 market, is tenuous and will be sensitive to any anticompetitive pressure. To the extent
7 inappropriate anticompetitive elements exist in Arizona those elements should be
8 eliminated to ensure that markets will remain open to competition.

9 Qwest's existing "Competitive Response Program" tariff (Section 5.2 of Qwest's
10 Competitive Exchange and Network Services Tariff— a copy is attached as *Exhibit A*)
11 presents a factor that seriously jeopardizes whether the Arizona telecommunications
12 market, particularly the residential market, will remain open to effective competition.
13 Indeed, this "WinBack Tariff" is expressly designed to recapture market share through
14 predatory pricing. The ability of Qwest to recapture the 1.8% of residential market share
15 through significant price breaks and waivers of costs is wholly contradictory to ensuring
16 that the market will remain open to competition. As long as the WinBack Tariff is in
17 effect, the public interest is not served by granting Qwest's 271 application.

18 Qwest's WinBack Tariff is focused at one class of potential customers – those
19 customers "who have left [Qwest] for another telecommunications provider" [Tariff, Sec.
20 5.2.11.A.1] or "who have terminated or cancelled all or part of their [Qwest] services and
21 established service with another telecommunications provider" [Tariff, Sec. 5.2.11.B.1].
22 For customers who return to Qwest from a competing provider, they are treated to a variety
23 of free services. Under the tariff, residential customers can receive:

1. a waiver of nonrecurring charges and up to two months of recurring charges. The waiver of those charges can be up to \$100 per customer location; and
2. a waiver of intraLATA MTS (Message Telecommunication

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Service) charges up to \$50.00 per customer per year.

Business customers can receive:

1. a waiver of the current nonrecurring charges and up to two months of the current monthly rates;
2. a waiver of intraLATA MTS charges.

Thus, Qwest can offer significant free service for the most basic of its service – 1FR (residential) and 1FB (business) – as incentive to recapture market share. Given Qwest’s enormous market share – particularly for residential – Qwest does not need the WinBack tariff to be competitive in the market. It only needs the WinBack tariff to be anticompetitive – that is, to target the minute percentage of customers who have left Qwest. By recapturing those customers, Qwest clearly has the ability to stymie what little competition there is in Arizona.

If there is any doubt that Qwest will use the WinBack Tariff aggressively, attached as *Exhibit B* is a mailer that Qwest sent to former customers in April 2001.¹ In the mailer, Qwest raises CLEC service performance as a reason to return for service. That CLEC performance, unfortunately, often is dependent on Qwest’s wholesale performance for the CLEC. A typical CLEC customer certainly may not understand a CLEC’s dependency on Qwest to provide service – from the initial port on, including such things as trunk blockage that interfere with good service. For example, as Cox has explained in other workshops, Cox has experienced numerous problems with Qwest over the porting process. When Qwest rescinds an FOC, Cox is often blamed for the delays in the porting schedule. When Qwest prematurely disconnects a customer that wants to port to Cox, Cox’s reputation

¹ Cox questions how Qwest developed the mailing list for such a mailing. Obviously, Qwest has the addresses of every Qwest customer that has ported its number from Qwest to another CLEC. How that information got from Qwest Wholesale Services to Qwest’s retailing marketing is disconcerting.

1 suffers because the transfer was not seamless. Once a customer transfers to a CLEC,
2 anything Qwest does that adversely affects CLEC service to that customer directly harms
3 the CLEC. Under the WinBack Tariff, Qwest is in a position to capitalize on such harm.

4 Moreover, in light of the WinBack Tariff, the Performance Assurance Plan may be
5 rendered ineffective. Qwest may be willing to suffer a modest penalty for bad wholesale
6 performance if it has the tools to aggressively seek to recapture the CLEC customer that is
7 affected by Qwest's poor wholesale performance. Ultimately, such customer "recapture"
8 eliminate the ability of a CLEC to effectively compete in the market. It also discourages
9 CLEC investment in facilities in Arizona. As a result, the Arizona market is not
irreversibly open to competition.

10 Cox urges the Commission to withhold 271 approval in Arizona until Qwest
11 withdraws its WinBack Tariff.² Until then, the public interest is not served because the
12 nascent competition in Arizona can be quashed through a tariff scheme that basically
13 allows predatory pricing by a monopolist. Qwest can offer services below cost (*i.e.*, for
14 free) with the express intent of taking customers from its competitors. Given its enormous
15 market share and its guaranteed rate of return on other services, Qwest could afford to
16 suffer losses under the WinBack Tariff for a significant length of time – time enough to
17 decimate competition.
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22 ² At some point, when Qwest's market share drops to something well below 95-98%, a
23 Qwest WinBack Tariff might be acceptable. Cox does have a winback tariff in Arizona but there
is no chance of harm to competition as a result of that tariff given Cox's market share.

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Dated: May 17, 2001.

COX ARIZONA TELCOM. L.L.C.

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**COMPETITIVE
EXCHANGE AND
NETWORK SERVICES**

**U S WEST COMMUNICATIONS
Price Cap Tariff (C)
Arizona**

**SECTION 5
Index Page 1
Release 3**

Issued: 01-08-1999

Effective: 04-01-2001

5. EXCHANGE SERVICES

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Local Exchange Services	1	
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Residence Competitive Response Program	1	(N)

Exhibit A

Issued: 01-08-1999

Effective: 04-01-2001

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE

(N)

5.2.11 COMPETITIVE RESPONSE

A. Residence Competitive Response Program

1. Description

The Residence Competitive Response Program is an offering to residence customers who have left U S WEST for another telecommunications provider, for their local exchange service and/or their intraLATA toll service, and are now returning.

U S WEST will offer incentives to customers who return for their telecommunications needs.

2. Terms and Conditions

- a. This competitive response offering will only be offered to customers returning to U S WEST from a competing telecommunications provider.
- b. Residence customers' return to U S WEST intraLATA toll is regarded separately from their return to U S WEST local exchange service.
- c. Residence customers will receive the waivers only on their initial return to U S WEST for their local exchange service.
- d. Periods and provisions of this offer will be determined by U S WEST .
- e. U S WEST reserves the right to discontinue this offer, without further proceedings or approvals, upon 14 days notice to the Arizona Corporation Commission.

3. Rates and Charges

- a. Customers returning to U S WEST for their local exchange service will receive either a waiver of the current nonrecurring charge, up to two months of recurring rates or both, on selected services determined by the Company. Amounts and types of the waivers will vary. In addition, customers may be eligible for waivers of intraLATA MTS charges.
- b. Total local exchange service charges waived will not exceed \$100.00 per customer location.
- c. Customers returning to U S WEST for intraLATA toll service will receive waivers not to exceed \$50.00 per customer per year.

Issued: 01-08-1999

Effective: 04-01-2001

5. EXCHANGE SERVICES

5.2 LOCAL EXCHANGE SERVICE
5.2.11 COMPETITIVE RESPONSE (Cont'd)

(N)

B. Business Competitive Response Program

1. Description

The Business Competitive Response Program is an offering to business customers who have terminated or canceled all or part of their U S WEST services and established service with another telecommunications provider, and such business customers are reestablishing some material part of their services with U S WEST.

In accordance with the terms of this Business Competitive Response Program, U S WEST may offer incentive(s) to such returning business customers.

2. Terms and Conditions

- a. The Business Competitive Response Program may be offered only to business customers returning to U S WEST from a competing telecommunications provider.
- b. The Company may offer returning business customers incentives in the form of a credit on the business customer's bill after the business customer actually reestablishes the agreed upon service with U S WEST.
- c. Business customers may not obtain the incentive(s) or any credits after their first or initial return to U S WEST for which incentive credit(s) have been provided.
- d. Business customers may receive the incentive credit(s) only in connection with services that are reestablished or established upon the initial return to U S WEST.
- e. Business customers' return to U S WEST intraLATA toll is regarded separately from their return to U S WEST local exchange service.
- f. On contractual services, business customers are required to sign a contract in order to receive a waiver.

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Effective: 04-01-2001

5. EXCHANGE SERVICES

(N)

5.2 LOCAL EXCHANGE SERVICE

5.2.11 COMPETITIVE RESPONSE

B.2. (Cont'd)

- g. Business customers who receive the Competitive Response Program credit(s) are required to remain with U S WEST for a minimum of one year or be billed all of the nonrecurring charge(s) and monthly rate(s) waived.
- h. U S WEST reserves the right to discontinue this offer, without further proceedings or approvals, upon 14 days notice to the Arizona Corporation Commission.
- i. Returning business customers are required to have a satisfactory credit rating with U S WEST in accordance with 2.3.3.
- j. U S WEST shall use reasonable business efforts so that similarly situated customers are offered similar incentive credits in similar circumstances.
- k. The Business Competitive Response Program is a competitive response only and is not available for resale.

3. Rates and Charges

- a. Returning business customers receive a maximum of either a waiver of the current nonrecurring charge(s), or up to two months of the current monthly rate(s), or both, on selected services as determined by U S WEST. In addition, returning business customers may be provided waivers of intraLATA MTS charges.
- b. Incentive amounts are calculated on the first month's nonrecurring charge(s) and monthly rate(s). The total credit amount will not exceed the total nonrecurring charge(s) plus two months service of the monthly rate(s).

[1] Pages 4 through 6 were previously cancelled.

*Is your phone service
running on empty?*

*Empty promises,
that is.*

ride the light
Qwest. 

Exhibit B



5090 N. 40th Street
Phoenix, Arizona 85018

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
DENVER, CO
PERMIT # 3570

By now you may have discovered your new phone service isn't turning out to be all that was promised. Maybe it's time to come back to Qwest where you get lots of choices with specially priced packages. We're making it worth your while to come back right now by waiving the installation charge.

You'll be assured of reliable phone service. You'll have the most advanced features at a value price. And you'll have great choices like Total Package™ - your home phone, 1300 wireless minutes and Internet access - at one great price. Who else gives you so much for so little?

- Wireless service that uses the same phone number as your home phone.
- Voice messaging service with a single voice mailbox for both your home and wireless phones.
- Internet services that get you on-line faster and more reliably.

Come back to Qwest and we'll make it free and easy to return.

Call Today! 1-800-242-5035

Offer valid for addressee only. Offer is a waiver of non-recurring charges for standard installation; retail value varies by state. One waiver per customer. Not all services available in all areas. Other limitations may apply. © 2001 Qwest Communications International Inc. AZ, CO, IA, MN, NE, OR, ND, WA, WY

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