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BEFORE THE ARIZONA CORPORATION COMMISSION <sup>2002 JUN</sup> -5 P 4:08

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF RULES TO ADDRESS  
SLAMMING AND OTHER DECEPTIVE  
PRACTICES.

Docket No. RT-00000J-99-0034

**QWEST CORPORATION'S THIRD SET  
OF WRITTEN COMMENTS ON  
PROPOSED SLAMMING AND  
CRAMMING RULES**

On May 17, 2002, the Arizona Corporation Commission ("Commission") issued a Procedural Order scheduling a public comment hearing for July 8, 2002, on the proposed slamming and cramming rules. Staff requested that all interested parties provide written comments on the proposed rules on or before June 5, 2002. Accordingly, Qwest Corporation ("Qwest") submits the following for consideration. In addition, Qwest incorporates its prior written comments and exceptions filed on June 12, 2001, August 6, 2001, and November 23, 2001, to the extent that Staff did not adopt the revisions set forth therein.

PROPOSED SLAMMING RULES

Despite revisions made by Staff since November 9, 2001, the Proposed Rules continue to reflect significant inconsistencies with federal law and regulations in language, structure, and requirements imposed on carriers. Such inconsistencies are forbidden under both federal and state law. In 2000, the Federal Communications Commission ("FCC") established rules outlining the process for a carrier to change a subscriber's telephone service. See 47 C.F.R. § 64.1100 et seq. Subsequently, the FCC gave states the authority to administer slamming disputes if the

Arizona Corporation Commission

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1 states maintained consistency with the FCC rules. See In the Matter of Implementation of the  
2 Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, etc.,  
3 CC Docket No. 94-129, FCC 00-135, First Order on Reconsideration, 22, 26 (rel. May 3, 2000).  
4 In addition, Arizona law also mandates consistency between the federal and state regulations  
5 regarding slamming and its consequences. See A.R.S. § 44-1572 and § 44-1573. As a result,  
6 Qwest and other parties have repeatedly requested that the Commission adopt anti-slamming  
7 rules consistent with those adopted by the FCC. The long and detailed process of the FCC  
8 proceedings demonstrates that the FCC has struck a careful balance that ought to be followed  
9 unless and until real experience shows, compellingly, some other or further need.  
10

11         Additionally, the Proposed Rules are redundant and lack clarity, which has resulted in  
12 vague language that will merely confuse the subscribers, telecommunications carriers, and  
13 regulatory staff who must administer and interpret the rules. According to the Arizona Revised  
14 Statutes, a rule proposed by the Arizona Corporation Commission must be “clear, concise, and  
15 understandable.” See A.R.S. § 41-1044. Further, a rule is limited to “an agency statement of  
16 general applicability that implements, interprets or prescribes law or policy, or describes the  
17 procedure or practice requirements of an agency.” See A.R.S. § 41-1001.17. Therefore, purpose  
18 statements, like those proposed in R14-2-1902 and R14-2-2002, violate rulemaking requirements  
19 under Arizona law.  
20

21  
22         Furthermore, although the Arizona Corporation Commission is exempt from filing an  
23 economic, small business, and consumer impact statement, Arizona law requires the Commission  
24 to prepare a “substantially similar” impact statement. See A.R.S. § 41-1057. Under the Notice of  
25 Proposed Rulemaking, the Commission included a Preliminary Summary of the Economic, Small  
26

1 Business, and Consumer Impact. The statement issued by the Commission contains few of the  
2 required provisions required under A.R.S. § 41-1055, which the Commission must use as a  
3 guideline in producing its impact statement. The Commission failed to address: 1) probable costs  
4 and benefits to the implementing agency and other agencies directly affected by the proposed rule  
5 making; 2) probable costs and benefits to businesses directly affected by the proposed rule  
6 making; 3) a general description of the probable impact on private and public employment in  
7 businesses and agencies; 4) probable impact on small businesses; 5) probable effect on state  
8 revenues; and 6) a description of less intrusive or costly means of achieving the same purpose.  
9 The Commission did make a cursory statement regarding potential benefits and losses by  
10 telecommunications companies and consumers. The statement lacked specificity, however, and  
11 failed to recognize that many telecommunications companies are small businesses. As a result,  
12 the Commission lacks any clear analysis of the impact on these small businesses, consumers, or  
13 the state economy.  
14

15  
16 As a result, Qwest remains concerned with the lack of consistency with the federal rules,  
17 the lack of clarity, and the lack of precision in the Proposed Rules. Therefore, Qwest reiterates its  
18 request that the Commission adopt the FCC rules. However, should the Commission choose to  
19 adopt the Proposed Rules, Qwest recommends the following specific changes.  
20

21 A.A.C. R14-2-1901. Definitions

22 Subsection C: Qwest recommends that the Commission replace its proposed definition of  
23 “customer” with the FCC’s definition of “subscriber”. Use of the term “subscriber” is common  
24 industry practice and is familiar to telecommunications consumers. Although Staff has adopted  
25 the term “subscriber” in portions of the Proposed Rules, “customer” is also heavily employed and  
26

1 used interchangeably with “subscriber”. The failure to maintain consistency with one term and  
2 the almost indistinguishable definitions between “customer” and “subscriber” only adds to  
3 confusion for consumers, telecommunications companies, and regulatory staff. Therefore, Qwest  
4 urges the Commission to completely eliminate use of the term “customer” and insert “subscriber”  
5 to maintain consistency within its own rules and with those of the FCC.  
6

7 Subsection D: The term “Customer Account Freeze” should be replaced with either  
8 “Preferred Carrier Freeze,” which the FCC employs or, in the alternative, the term “Subscriber  
9 Freeze.” Because the freeze does not affect the entire account, “Preferred Carrier Freeze” more  
10 accurately describes what is frozen. Further, an unlawful conflict exists between the Proposed  
11 Rules and the FCC rules. Under the Arizona rules a subscriber can authorize a stay on any  
12 change in services with a Customer Account Freeze; a freeze under the FCC rules only limits the  
13 change in provider. In addition, the definition used in the Proposed Rules need not include the  
14 means of authorization, because the process is outlined in greater detail in Rule 14-2-1909.  
15

16 Subsection F: “Letter of Agency” (“LOA”) should also be eliminated from the  
17 definitional section. Not only did the FCC find no reason to define LOA, the Commission’s  
18 definition lacks clarity, because it fails to explain that an LOA is a written authorization by a  
19 subscriber empowering **another person or entity** to act on the subscriber’s behalf.  
20

#### 21 A.A.C. R14-2-1902. Purpose and Scope

22 Qwest recommends eliminating this rule entirely. To be valid, rules must incorporate  
23 more than a purpose statement. A purpose statement violates A.R.S. § 41-1001.17, which limits a  
24 rule to a statement that actually “interprets or prescribes law or policy, or describes the procedure  
25 or practice requirements of an agency.”  
26





1 out thirty days while the Arizona rules set out ninety days, and the time periods demonstrate  
2 significant conflict.

3 Subsection B: Qwest recommends eliminating the five-business day requirement from  
4 Rule 14-2-1907(B). The requirement is unrealistic in many circumstances, because a reasonable  
5 response time will vary according to the circumstances.  
6

7 Subsection C: Although Rule 14-2-1907(C) requires the "Telecommunications  
8 Company" to remedy an unauthorized change, the "Unauthorized Carrier" is the responsible party  
9 for remedying unauthorized changes. Qwest therefore requests that the Rule be re-written to  
10 state, "the Unauthorized Carrier shall:".

11 Subsection C(2): This proposed rule also creates inconsistency with the federal rules by  
12 absolving subscribers of all unpaid charges for a period of ninety days following a slam. In  
13 contrast, the FCC rules absolve subscribers of unpaid charges associated with a slam for a period  
14 of only thirty days. This conflict will create administrative problems for telecommunications  
15 companies and will only lead to subscriber confusion, particularly when slamming complaints  
16 involve both interstate and intrastate calls.  
17

18 Subsection C(3): This provision departs significantly from the FCC rules, which is not  
19 only prohibited by Arizona law but also creates subscriber confusion. See A.R.S. § 44-1572 and  
20 § 44-1573. The FCC permits the original carrier to rebill calls, whereas the Arizona Proposed  
21 Rules prohibit the carrier from rebilling. As a result, under the Arizona rules both the original  
22 carrier and the Unauthorized Carrier are penalized. Although, the FCC rules protect the  
23 subscriber by preventing an Unauthorized Carrier from charging unauthorized rates, they also  
24 protect the original carrier by permitting the telecommunications company to rebill the subscriber  
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1 for foregone services during the absolution period. The Proposed Rules, in contrast, both  
2 eliminate any liability for the subscriber during the first ninety days and entitle the subscriber to  
3 reimbursement of 150% of those charges under R14-2-1907(C)(4). The original carrier receives  
4 reimbursement from the Unauthorized Carrier for the costs to return the subscriber, but receives  
5 no compensation for business lost due to the Slam. This significant conflict with the federal rules  
6 is not only prohibited by Arizona law, but will only create confusion among subscribers.  
7

8 Subsection D: Qwest believes that the Commission should not inject itself into credit  
9 reporting relationships, which are governed by federal law. The Proposed Rules create conflict  
10 with federal agencies charged with administration of the Fair Credit Reporting Act.  
11

#### 12 A.A.C. R14-2-1908. Notice of Customer Rights

13 Subsection B(6): This subsection directly conflicts with R14-2-1907(C)(3), which  
14 prohibits the original Telecommunications Carrier from billing the subscriber for unauthorized  
15 charges during the first ninety days of the Unauthorized Carrier's service. In contrast, this  
16 provision requires the Telecommunications Carrier to include language in the notice of subscriber  
17 rights stating that the original telecommunications carrier may rebill subscribers for service  
18 provided during the first ninety days following a slam.  
19

20 Subsection C(2): Although Staff has expanded application of this rule to  
21 telecommunications companies that contract for publication of a telephone directory, the  
22 language should be further broadened. The Commission should either: 1) impose a publication  
23 requirement on all telecommunications companies; or 2) require each company to contribute to  
24 the cost of a generic notice for all companies. Otherwise, those companies that publish a  
25 directory are penalized.  
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A.A.C. R14-2-1909. Customer Account Freeze

Subsection D: This subsection demonstrates additional unlawful conflict between the Proposed Rules and the FCC rules. The Proposed Rules require a formal authorization to add a freeze to long distance service, which the federal rules do not require to add a freeze on interLATA or intraLATA service. The Arizona rules also require verification of a subscriber request, except for a three-way call, to lift a freeze, which is not required under the federal rules.

A.A.C. R14-2-1910. Complaint process

Because the Commission places the burden of proof on the responding company and establishes a presumption in favor of the subscriber, Qwest finds serious due process concerns with Proposed Rule 14-2-1910.

Subsection B(4): Moreover, the Commission also raises due process concerns by presuming the existence of an unauthorized change when a company fails to provide supporting documentation within 10 days. In such circumstances, the Commission makes a binding decision under an informal complaint process.

Subsections B(6) and B(7): These subsections should be eliminated, as they repeat the provisions contained in Subsections C and D. The redundancy of the Proposed Rules only serves to confuse carriers and subscribers.

A.A.C. R14-2-1911. Compliance and Enforcement

This Proposed Rule should be deleted, as it restates the penalty statutes contained in the Arizona Revised Statutes. See A.R.S. §§ 44-1572, 44-1573. The Commission should also adopt the FCC's approach, which considers the willfulness of carriers in assigning penalties. The severity of penalties should vary according to the level of carrier culpability.

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A.A.C. R14-2-1914. Script Submission

Qwest supports AT&T's objections to Proposed Rule R14-2-1914 made at the Special Open Meeting on May 8, 2002. Filing scripts under seal relieves few confidentiality concerns. Confidentiality issues continue to exist, because scripts remain subject to Staff review under the Proposed Rules. Any problems found by the Commission upon reviewing the scripts will result in the scripts losing their confidential status. In addition, the filing of a script and the right of the Director of the Utilities Division to review it constitutes an unlawful, prior, restraint upon speech, in violation of the Arizona and United States Constitutions. Therefore, Qwest recommends eliminating this Propose Rule.

PROPOSED CRAMMING RULES

Qwest requests that the Commission delete proposed Article 20 in its entirety. Commission rules and tariffs governing billing disputes and consumer complaints already exist to address these concerns. See Arizona Administrative Code R14-2-501 et seq. In addition, cramming charges are generally imposed by an "ancillary service provider" for goods or services unrelated to the subscriber's telephone service. See A.R.S. §§ 44-1571, 44-1574. The Commission lacks jurisdiction over these providers, which eliminates the ability to impose these rules. Moreover, the regulated telecommunications companies only have the ability to refer the subscriber to the proper entity and recourse the disputed charges. Finally, the extensive detail included in Article 20 shifts the focus of the reasonableness of conduct to technical compliance with specific language. However, if the Commission chooses to adopt the proposed cramming rules, Qwest recommends adopting the changes specified in the first and second set of comments, which are reiterated below.

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A.A.C. R14-2-2002. Purpose and Scope

Qwest recommends that the Commission eliminate this Proposed Rule entirely. As noted in response to Rule R14-2-1902, rules are not intended to merely state a purpose. A purpose statement violates A.R.S. § 41-1001(17), which limits a rule to a statement that actually “interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” However, if the Commission chooses to adopt this rule, it should address unauthorized charges on bills imposed by all entities, rather than just telecommunications companies.

A.A.C. R14-2-2005. Authorization Requirements

Subsection A(3): Qwest recommends deleting the requirement that a telecommunications company obtain “explicit customer acknowledgement that the charges will be assessed on the customer’s bill.” When a subscriber is advised of the applicable charges, the telecommunications company should be able to assume the subscriber expects to see the charges on the bill.

Subsection B(1) and B(2): The obligation of the provider should be limited to providing a clear, non-misleading description of the product or service. Although in many cases an “explanation” may be desirable or useful, requiring an explanation at the point of sale, in every case, is not appropriate. Similarly, representatives should be providing a “statement” of applicable charges, not an “explanation”. In addition, Qwest suggests adding “for each product or service requested” to the end of Subsection B(2). The representative should not be required to provide the charges of every service or product offered, only those that the subscriber requests or agrees to buy.

Subsection B(3): Qwest also recommends deleting the requirement that representatives explain “how the charge will appear on the customer’s bill.” It is only critical that the subscriber

1 receive a description of the service or product and a statement of the charges; an explanation of  
2 how the charge will appear only adds unnecessary time to subscriber contact and increases hold  
3 times.

4         Subsection C: As noted in response to Rule R14-2-1905, telecommunications companies  
5 should only be required to provide notice in the subscriber's choice of language. In addition,  
6 requiring notice to be written in **any** language used at any point in a sales transaction will result in  
7 a significant cost increase.

8  
9                                 A.A.C. R14-2-2006. Unauthorized Charges

10         Subsection A(5): Qwest's current practice is to record information regarding a complaint  
11 on the individual subscriber's record, where all information pertaining to the subscriber's account  
12 is currently maintained. This is the most efficient and reasonable means to record such  
13 information.

14  
15         Subsection C(2): As noted above in response to Rule 14-2-1907, the portion of the rule  
16 addressing credit reporting should be eliminated.

17                                 A.A.C. R14-2-2007. Notice of Customer Rights

18         Subsection C(1): Qwest recommends eliminating the requirement that an address also be  
19 provided. A toll-free number should be sufficient, as Qwest noted in its first and second sets of  
20 comments for this rule and Rules 14-2-1906 and 14-2-2004. An address requirement is  
21 burdensome and unnecessarily costly.

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23         Subsection D(2): As noted in response to Rule 14-2-1908, this requirement should apply  
24 to all telecommunications companies.

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A.A.C. R14-2-2008. Informal Complaint Process

As noted above in response to Rule 14-2-1910, Qwest finds due process concerns with Rule 14-2-2008. The rule places the burden of proof on the responding company and establishes a presumption in favor of the subscriber.

A.A.C. R14-2-2009. Compliance and Enforcement

As noted in response to Rule 14-2-1911, this rule essentially restates the penalty statutes contained in the Arizona Revised Statutes. See A.R.S. §§ 44-1572, 44-1573. Therefore, the rule is redundant and should be eliminated.

A.A.C. R14-2-2012. Script Submission

As noted in response to Rule 14-2-1914, production of these scripts raises confidentiality issues. Any problems found by the Commission upon reviewing the scripts will require the Commission to use the confidential information. In addition, the filing of a script and the right of the Director of the Utilities Division to review it constitutes an unlawful, prior, restraint upon speech, in violation of the Arizona and United States Constitutions. Therefore, Qwest recommends eliminating this Propose Rule.

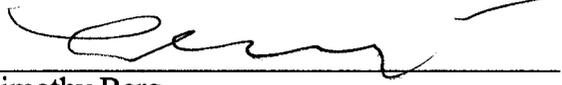
CONCLUSION

As noted above, Qwest requests that the Commission adopt the FCC's rules on slamming. Both federal and state law mandate consistency between the federal and state regulations regarding slamming. In addition, the Commission should reject the proposed cramming rules. If the Commission nonetheless chooses to accept the Proposed Rules, Qwest recommends the adoption of the changes outlined herein.

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RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of June, 2002.

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