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EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2001 NOV 23 A 10:58

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Commissioner
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Commissioner

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

DOCKET NO. RT-00000J-99-0034

EXCEPTIONS OF QWEST
CORPORATION

Qwest Corporation ("Qwest"), through its undersigned counsel, submits the following exceptions to the Utilities Division's November 9, 2001 Memorandum and Recommended Order in the above captioned docket. The Arizona Corporation Commission ("Commission") should reject Staff's recommendation to forward a Notice of Proposed Rulemaking for the Proposed Rules to the Secretary of State in order to commence the statutory requirements for rulemaking under the Arizona Administrative Procedures Act (Arizona Revised Statutes, Title 41, Chapter 6). Qwest incorporates its prior written comments filed on June 12, 2001 and August 6, 2001, which detail Qwest's concerns on a rule-by-rule basis, to the extent that Staff did not adopt the revisions set forth therein.

Despite some revisions made by Staff since the prior August 2001 draft was circulated, the Proposed Rules continue to reflect significant inconsistencies with federal law and regulations in language, structure and the requirements imposed on carriers. Such inconsistencies are impermissible under both federal and state law. Moreover, the Proposed Rules would create an "informal complaint" process that places the burden of proof upon the responding telecommunications carrier and establishes a presumption against the carrier in favor of the subscriber, thereby raising due process concerns. As a whole, the Proposed Rules remain ambiguous and confusing for telecommunications carriers, subscribers and the regulatory staff who will be called upon to administer and interpret the rules. The Commission would be better

1 served to administer the existing federal rules and should give additional consideration (e.g.
2 evidentiary hearings, briefing, etc.) to the issues set forth herein and in Qwest's prior comments,
3 before it commences the formal rulemaking process.

4 **Proposed Slamming Rules**

5 The Federal Communications Commission ("FCC") has already established rules
6 governing the steps that carriers must take before changing a customer's telephone service. See
7 47 C.F.R. §64.1100 et seq. Subsequently, the FCC gave the states the authority to administer
8 these rules. See In the Matter of Implementation of the Subscriber Carrier Selection Changes
9 Provisions of the Telecommunications Act of 1996, etc., CC Docket No. 94-129, FCC 00-135,
10 First Order on Reconsideration, 22 (rel. May 3, 2000). The FCC concluded that "it is in the
11 public interest to have state commissions, rather than a third party designated by carriers,
12 perform the primary administrative functions of our slamming liability rules." Id. at 24. As a
13 result, the FCC advised state commissions to "provide prompt and appropriate resolution of
14 slamming disputes between customers and carriers in a manner consistent with the rules adopted
15 by this Commission [the FCC]." Id. at 26 (emphasis added).

16 Arizona law also mandates consistency between the federal and state regulatory
17 regimes regarding slamming and its consequences. See A.R.S. § 44-1572 and § 44-1573.
18 Arizona statutes authorize the Commission to adopt these rules only insofar as they are
19 consistent with federal law and regulations. A.R.S. § 44-1572(L) and § 44-1573(K).

20 In this proceeding, Qwest and a number of other parties have consistently
21 requested that the Commission adopt anti-slamming rules that are consistent with those adopted
22 by the FCC. The long history of the FCC proceedings, the multiple orders, and the repeated
23 "fine-tuning" of the rules demonstrates that the FCC has struck a careful balance that ought to be
24 followed unless and until real experience shows, compellingly, some other or further need.

25 Consistency in language and application is material to consumers and carriers
26 alike. Here, the Proposed Rules provide that the Commission has elected to administer the

1 federal slamming rules; nevertheless, the Proposed Rules go on to establish requirements that
2 either directly conflict with the federal rules or create uncertainty between the federal and state
3 regulatory schemes. The more the FCC and Arizona rules mirror each other, the better from
4 both an administrative and policy perspective, but most importantly, from the consumers'
5 perspective.

6 As an isolated example, the Proposed Rules require that a local exchange carrier
7 obtain either a formal "Letter of Agency" and/or verbal authorization from the subscriber with
8 third party verification. See Propose Rule R14-2-1090. The FCC mandates a less stringent
9 requirement. See 47 C.F.R. § 64.1190(e). The FCC does not require third party verification.
10 Instead, the FCC requires the local exchange carrier to accept verbal authorization via a 3-way
11 conversation between the subscriber, the local exchange carrier, and the impacted
12 telecommunications company. Id. The Proposed Rule would require yet a fourth party be
13 included, which will introduce an unnecessary level of complexity into the process (e.g., four-
14 way conferencing capacity issues, customer satisfaction relative to length of time and ease of
15 change, etc.).

16 **Proposed Cramming Rules**

17 As set forth in Qwest's prior comments, the proposed Article 20 should be
18 eliminated in its entirety. Commission rules and tariffs governing billing disputes and consumer
19 complaints are already in place. See Arizona Administrative Code R14-2-501 et seq. There is
20 little the regulated company can do other than to refer the subscriber to the proper entity and
21 recourse the disputed charges.

22 Again, Qwest would urge that the proposed Article 20 should be completely
23 eliminated. There is no need for the Article, and the offense at which it is directed is far better
24 covered by the existing rules of the Commission. The Proposed Rules fail to indicate any
25 relationship to the Arizona statutes directed at cramming. See A.R.S. § 40-1573 and § 40-1574.
26 In fact, A.R.S. § 40-1574 does not authorize any rulemaking. A.R.S. § 40-1573(K) again only

1 allows optional rulemaking that is consistent with federal law and the FCC's rules. Further
2 action by the Commission, through these Proposed Rules, is unwarranted and the Commission
3 should review and explain how such rules integrate with both federal law and state statutes.

4 Dated this 23rd day of November, 2001.

5 FENNEMORE CRAIG, P.C.

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7 By 

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