

Unfiled



0000105418

RECEIVED

2002 FEB 15 P 2:59

BEFORE THE ARIZONA CORPORATION COMMISSION

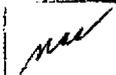
WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

DOCKETED

FEB 15 2002

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY 

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

**QWEST CORPORATION'S REPLY TO COX ARIZONA TELCOM'S LATE-FILED
COMMENTS ON QWEST'S PROPOSED LOCAL SERVICE FREEZE TARIFF**

Qwest Corporation ("Qwest") submits the following reply to the out-of-time¹ comments filed by Cox Arizona Telcom, L.L.C. ("Cox") on February 5, 2002. Cox speculates about the possible operation of a *proposed* Qwest local service freeze ("LSF") tariff that Cox concedes is not yet in effect and that the Commission will review directly and in detail in a separate docket. Cox gives no reason why the Commission should engage in a duplicative round of tariff review as part of the section 271 process, especially when the Commission's other docket will determine the precise terms of the tariff's implementation and may moot Cox's concerns entirely. More fundamentally, Cox's premise that a local service freeze — which merely gives consumers *the option* of requiring extra verification before their service is switched to another carrier — is

¹ The Commission's deadline for submitting briefs on the public interest test was September 19, 2001. See June 12, 2000 Procedural Order, Docket No. T-00000A-97-0238.

somehow anticompetitive is entirely off-base; contrary to Cox's rather disingenuous suggestion, the Federal Communications Commission ("FCC") has *affirmatively endorsed* LSFs as a valuable consumer protection against unauthorized service changes, or "slamming." The Commission should reject Cox's invitation to shoehorn review of Qwest's LSF tariff into the public interest and local number portability inquiries and continue to consider Qwest's tariff in due course.

On December 13, 2001, Qwest notified Commission Staff that it would give consumers the option of requiring personal verification for their local service provider to be switched to another carrier. Qwest planned on making the LSF option available to customers beginning January 17, 2002. On January 11, 2002, Cox filed an application requesting an order to show cause to stay implementation of Qwest's proposed LSF option, complaining that Qwest had not filed a tariff. Although Qwest does not agree that LSF is an actual service or product (as opposed to a "practice" or "method"), or that a tariff filing is required, Qwest agreed to delay implementation of the LSF and to submit an LSF tariff for Commission review and approval.

The Commission is currently considering the LSF tariff in a separate docket, No. T-01051B-02-0073. The Commission Staff has recommended — and Qwest has not opposed — suspending the LSF tariff filing for 120 days (or until May 28, 2002) so that the Commission can consider the very issues raised by Cox and other parties. Given that there is already a separate Commission proceeding under way to review the proposed LSF tariff, and given that this proceeding will resolve the specific implementation questions that concern Cox, there is no reason to duplicate that process here.

Indeed, the FCC itself has made clear that the appropriate place to consider complaints about an LSF provision is a state enforcement or review proceeding like the one already under

way in Arizona, not the section 271 process. In Pennsylvania, for example, WorldCom made the same argument as Cox does here that a Verizon LSF option was anticompetitive, making grant of Verizon's section 271 application contrary to the public interest.² The FCC declined to take the bait. It held that LSF programs are not *per se* violations of the FCC's rules or the public interest test and cited an earlier FCC decision (discussed in greater detail below) that actually *endorsed* LSF programs as positive and pro-consumer.³ Given that WorldCom's complaints about the LSF program were being considered in a pending proceeding at the Pennsylvania PUC, the FCC saw no reason to consider those complaints as part of the section 271 public interest inquiry.⁴ The same reasoning applies here.

Moreover, Cox's premise for considering LSF issues as part of the public interest inquiry — that Qwest's LSF tariff is somehow anti-consumer or anti-competitive — is based on a misunderstanding of how LSFs operate and a misrepresentation of the FCC's ruling on LSF programs. An LSF is not something that Qwest imposes on its customers unilaterally; rather, Qwest simply makes the option available and customers choose for themselves whether they want to require some higher degree of personal validation before their presubscribed carrier can be switched. Qwest's LSF tariff expressly provides that a customer would have to contact Qwest directly and specifically ask that a freeze be placed on his or her local service provider.⁵

² See Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 ¶ 133 (2001) (“*Verizon Pennsylvania Order*”).

³ *Id.* & n.456 (citing Second Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 14 FCC Rcd 1508 ¶¶ 135-37 (1998) (“*Slamming Order*”).

⁴ See *Verizon Pennsylvania Order* at ¶ 133.

⁵ In accordance with FCC rules, Qwest would verify each request to freeze the local

Additionally, “[a]t the time a customer contacts the Company to establish a freeze, a representative will advise him/her on how to facilitate a change of provider on a frozen account.”⁶ In that way, the LSF tariff offers consumers (but does not require them to take) greater protection against slamming while still making it very easy for them to switch local carriers if they later choose.⁷

It is for that reason that the FCC — far from “barely stopping short of prohibiting local carrier freezes,” as Cox represents⁸ — has affirmatively *permitted* local service freezes and endorsed them as a valuable anti-slamming tool. The very order Cox cites actually states as follows:

[W]e remain convinced of the value of preferred carrier freezes as an anti-slamming tool. We do not wish to limit consumer access to this consumer protection device because we believe that promoting consumer confidence is central to the purposes of section 258 of the Act. . . . We note the strong support of those consumer advocates that state that the Commission should not delay the implementation of preferred carrier freezes. We also expect that our rules governing the solicitation and implementation of preferred carrier freezes, as adopted herein, will reduce customer confusion and thereby reduce the likelihood that LECs will be able to shield their customers from competition.⁹

service provider by requiring a written or electronic signed authorization, an electronic authorization, or an independent third-party verification.

⁶ Qwest Corporation’s Exchange and Network Services Price Cap Tariff § 2.2.16 (A) (“Local Service Freeze”), filed with the Arizona Corporation Commission on January 28, 2002.

⁷ Cox’s attempt to characterize Qwest’s win-back tariff (the Competitive Response Program) as an additional barrier to competition rings very hollow, given that Cox itself has a win-back tariff in the state. In fact, at the Arizona workshop Cox conceded its own win-back or competitive response tariff was “similar to the Qwest competitive response tariff” that it is challenging here. Reporters’ Transcript of Proceedings, *In the Matter of U S West Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. T-00000A-97-0238, Workshop 7 — 272, Public Interest, Track A, June 12, 2001, at 197:7-11 (testimony of Brad Carroll).

⁸ Cox Comments at 3.

⁹ *Slamming Order* at ¶ 136.

This Commission will have every opportunity to review the implementation of Qwest's LSF tariff in Docket No. T-01051B-02-0073 and can assure itself that the tariff will be implemented in a way that protects the interests of Arizona consumers. But there is certainly no reason to find the tariff *per se* unreasonable here.¹⁰

Finally, Cox has not provided any legitimate justification for reopening the inquiry into Qwest's compliance with checklist item 11 (local number portability). The process of "unfreezing" a customer's account does not intersect with the process for porting a number to another carrier at all. When a customer contacts the CLEC to request a change of local service provider, the CLEC can discover immediately by looking at the party's customer service record ("CSR") whether the customer has previously requested an LSF and, while the potential CLEC customer is still on the line, can call Qwest directly and request that the LSF be removed. It is only after that process that the CLEC would actually submit the order for service to Qwest and the migration of the customer (and porting of his number) would proceed. Thus, contrary to Cox's claims, there is no mystery about Qwest's LSF procedures, no potential for customer "frustration and dissatisfaction," and no "significant barriers to exit for customers."

CONCLUSION

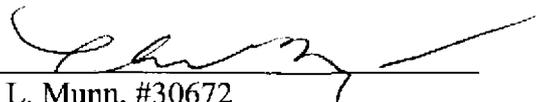
For the foregoing reasons, Qwest respectfully asks the Commission to reject Cox's request to reopen the records in the public interest and local number portability inquiries and find Qwest in compliance with respect to both items.

¹⁰ Moreover, the Commission has already permitted at least one other carrier to implement an LSF program. Following submission of its tariff to the Commission, SBC Telecom, Inc.'s "Preferred Carrier Freeze" became effective by operation of law on December 17, 2000.

DATED this 15th day of February, 2002

Respectfully submitted,

Qwest Corporation

By: 

John L. Munn, #30672
1801 California Street, 49th Floor
Denver, CO 80202
Telephone: (303) 672-5823

Timothy Berg
Theresa Dwyer
FENNEMORE CRAIG, P.C.
3003 North Central Ave., Suite 2600
Phoenix, Arizona 85012-2913
(602) 916-5421
(602) 916-5999 (fax)

Attorneys for Qwest Corporation

**ORIGINAL +10 copies filed this
15th day of February, 2002:**

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

COPY delivered this day to:

Maureen A. Scott
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

Lyn Farmer, Chief Administrative Law Judge
Jane Rodda, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

Caroline Butler
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPY mailed this 15th day of February, 2002 to:

Eric S. Heath
SPRINT COMMUNICATIONS CO.
100 Spear Street, Suite 930
San Francisco, CA 94105

Thomas Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, AZ 85004

Joan S. Burke
OSBORN MALEDON, P.A.
2929 N. Central Ave., 21st Floor
PO Box 36379
Phoenix, AZ 85067-6379

Thomas F. Dixon
WORLD COM, INC.
707 N. 17th Street #3900
Denver, CO 80202

Scott S. Wakefield
RUCO
2828 N. Central Ave., Ste. 1200
Phoenix, AZ 85004

Michael M. Grant
Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Michael Patten
ROSHKA, HEYMAN & DEWULF
400 E. Van Buren, Ste. 900
Phoenix, AZ 85004-3906

Bradley S. Carroll
COX COMMUNICATIONS
20402 North 29th Avenue
Phoenix, AZ 85027-3148

Daniel Waggoner
DAVIS, WRIGHT & TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101

Traci Grundon
DAVIS, WRIGHT & TREMAINE
1300 S.W. Fifth Avenue
Portland, OR 97201

Richard S. Wolters
Maria Arias-Chapleau
AT&T Law Department
1875 Lawrence Street, #1575
Denver, CO 80202

Gregory Hoffman
AT&T
795 Folsom Street, Room 2159
San Francisco, CA 94107-1243

David Kaufman
E.SPIRE COMMUNICATIONS, INC.
343 W. Manhattan Street
Santa Fe, NM 87501

Alaine Miller
XO COMMUNICATIONS, INC.
500 108th Ave. NE, Ste. 2200
Bellevue, WA 98004

Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF AMERICA
5818 N. 7th St., Ste. 206
Phoenix, AZ 85014-5811

Philip A. Doherty
545 S. Prospect Street, Ste. 22
Burlington, VT

W. Hagood Bellinger
5312 Trowbridge Drive
Dunwoody, GA 30338

Joyce Hundley
U.S. DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street N.W. #8000
Washington, DC 20530

Andrew O. Isar
TELECOMMUNICATIONS RESELLERS ASSOC.
4312 92nd Avenue, NW
Gig Harbor, WA 98335

Raymond S. Heyman
ROSHKA, HEYMAN & DEWULF
400 N. Van Buren, Ste. 800
Phoenix, AZ 85004-3906

Thomas L. Mumaw
SNELL & WILMER
One Arizona Center
Phoenix, AZ 85004-0001

Charles Kallenbach
AMERICAN COMMUNICATIONS SVCS, INC.
131 National Business Parkway
Annapolis Junction, MD 20701

Gena Doyscher
GLOBAL CROSSING SERVICES, INC.
1221 Nicollet Mall
Minneapolis, MN 55403-2420

Andrea Harris, Senior Manager
ALLEGIANCE TELECOM INC OF ARIZONA
2101 Webster, Ste. 1580
Oakland, CA 94612

Gary L. Lane, Esq.
6902 East 1st Street, Suite 201
Scottsdale, AZ 85251

Kevin Chapman
SBC TELECOM, INC.
300 Convent Street, Room 13-Q-40
San Antonio, TX 78205

M. Andrew Andrade
TESS COMMUNICATIONS, INC.
5261 S. Quebec Street, Ste. 150
Greenwood Village, CO 80111

Richard Sampson
Z-TEL COMMUNICATIONS, INC.
601 S. Harbour Island, Ste. 220
Tampa, FL 33602

Megan Doberneck
COVAD COMMUNICATIONS COMPANY
7901 Lowry Boulevard
Denver, CO 80230

Richard P. Kolb
Vice President of Regulatory Affairs
ONE POINT COMMUNICATIONS
Two Conway Park
150 Field Drive, Ste. 300
Lake Forest, IL 60045

Janet Napolitano, Attorney General
OFFICE OF THE ATTORNEY GENERAL
1275 West Washington
Phoenix, AZ 85007

Steven J. Duffy
RIDGE & ISAACSON, P.C.
3101 North Central Ave., Ste. 1090
Phoenix, AZ 85012

