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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

2002 FEB 25 PM 4:05

ARIZONA CORPORATION COMMISSION
CORPORATION COUNCIL

Arizona Corporation Commission
DOCKETED

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

Docket No. T-00000-~~158~~-235 2002

DOCKETED BY *mac*

**COX ARIZONA TELCOM, L.L.C.'S
REPLY TO ITS SUPPLEMENTAL COMMENTS ON
POTENTIAL IMPACT OF QWEST'S PROPOSED LOCAL
SERVICE FREEZE TARIFF ON PUBLIC INTEREST,
LOCAL NUMBER PORTABILITY
AND OTHER 271 ISSUES**

Cox Arizona Telcom, L.L.C. ("Cox") submits its reply to Qwest's "Reply to Cox Arizona Telcom's Late-Filed Comments." Qwest's reply both misses the point of Cox's supplemental comments and presents the disturbing position that Qwest believes its activities since September 19, 2001 are immune from scrutiny under the Public Interest element.

First, Cox filed its supplemental comments to provide notice to the Commission and to Qwest about its concerns regarding the potential Local Service Freeze ("LSF") tariff. Cox did not intend to duplicate the analysis on the appropriateness of the LSF tariff in this docket. That will take place in the tariff docket. However, if the tariff is approved, then Cox will submit more detailed comments regarding the impact of the tariff on the 271 issues implicated by the form of the tariff as approved. At that point, Qwest will not be able to assert that Cox should have raised these concerns earlier because Cox has provided notice of its concerns.

1 Moreover, Cox's supplemental comments are not "late-filed" or "out-of-time." Cox
2 is concerned that Qwest apparently believes that its conduct since the September 19, 2001
3 filing date on Public Interest cannot be considered by the Commission in the 271 docket.
4 However, Qwest is the one that decided to offer the LSF – not Cox. Qwest decided on the
5 timing of implementing the LSF. The LSF certainly can impact several of the 271 issues.
6 Cox cannot be prohibited from raising – and the Commission cannot be prevented from
7 considering – those impacts simply due to Qwest's timing. Indeed, it is Cox's under-
8 standing that the Commission does not view the 271 process as static. Rather, it is a
9 dynamic process that allows the Commission to consider the current circumstances.

10 Second, Cox stands by its contention that the FCC has substantial concern about the
11 anticompetitive effect of the implementation of an LSF in a market with little competition.

12 The FCC has stated:

13 We share concerns about the use of preferred carrier freeze
14 mechanisms for anticompetitive purposes. We concur with those
15 commenters that assert that, where no or little competition exists, there
16 is no real opportunity for slamming and the benefit to consumers from
17 the availability of freezes is significantly reduced. Aggressive
18 preferred carrier freeze practices under such conditions appear
19 unnecessary and raise the prospect of anticompetitive conduct. We
20 encourage parties to bring to our attention, or to the attention of the
21 appropriate state commissions, instances where it appears that the
22 intended effect of a carrier's freeze program is to shield that carrier's
23 customers from any developing competition.¹

24 The FCC further provided that:

25 We find that states – based on their observation of the incidence of
26 slamming in their regions and the development of competition in
27 relevant markets, and their familiarity with those particular preferred
carrier freeze mechanisms employed by LECs in their jurisdictions –
may conclude that the negative impact of such freezes on the develop-
ment of competition in the local and intraLATA toll markets may

¹ FCC 98-334, para. 135 (footnotes omitted).

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1 outweigh the benefit to consumers.²

2 Furthermore, it is disingenuous for Qwest to attempt to justify its LSF tariff by
3 reference to the fact that other CLECs have either an LSF tariff or a win back tariff. Qwest
4 continues to be intent on ignoring its enormous market share – particularly in the
5 residential market – and its resulting market power. That market power is the foundation
6 of the potential anticompetitive mischief from Qwest’s tariffs. CLEC tariffs are not a fair
7 or tenable comparison.

8 Third, Cox disagrees with Qwest’s contention that an LSF will not impact the
9 transfer of customers to competitors. For example, each and every Cox Customer Service
10 Representative does not have direct access to a Qwest customer’s account information to
11 determine if that customer has an LSF. That would require access through Qwest’s IMA
12 and specialized training for every CSR. However, Cox’s operational concerns can be
13 spelled out fully only upon approval of a final LSF tariff and upon a clear understanding of
14 how Qwest will implement that tariff. Suffice it say for now that Cox has significant
15 concerns about how the LSF will impact local number portability and the transfer of Qwest
16 customers to competitors.

17
18 RESPECTFULLY SUBMITTED February 25, 2002.

19 **COX ARIZONA TELCOM. L.L.C.**

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² FCC 98-334, para. 137.

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