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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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Arizona Corporation 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

**QWEST'S COMMENTS ON THE STAFF'S REPORT ON QWEST'S COMPLIANCE
WITH TRACK A AND THE PUBLIC INTEREST**

INTRODUCTION

Qwest Corporation ("Qwest") respectfully submits these comments on the Staff's Proposed Report on Qwest's Compliance with Public Interest and Track A, dated May 1, 2002 ("Staff Report").¹

The Staff Report concludes that the Commission should find that Qwest has satisfied the public interest requirements of section 271, subject to conditions outlined by Staff. Although Qwest agrees with virtually all of Staff's recommendations, it takes exception to Staff's suggestions that Qwest's "Competitive Response Program" (or "Winback") is somehow *per se* improper given competitor's relative market shares, and the condition that Qwest's section 271 application cannot be in the public interest unless Qwest suspends its Winback program for six months after its application is granted. Just yesterday, in its order approving BellSouth's section

¹ Staff's Proposed Report on Qwest's Compliance with Public Interest and Track A, *In the Matter of US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Arizona Corporation Comm'n, Docket No. TA-00000A-97-0238 (May 1, 2002) ("Staff Report").

271 applications for Georgia and Louisiana, the Federal Communications Commission (“FCC”) made clear that winback programs are appropriate under the FCC’s rules, and do not present a concern under section 271’s public interest standard. Qwest therefore seeks modification of the Staff Report as set forth below.

DISCUSSION

In response to concerns raised by Cox Arizona Telecom L.L.C., the Staff suggests that Qwest’s Competitive Response Program (known informally as “Winback”) somehow “has the potential to be an anticompetitive program”² and recommends that Qwest be required to file a modified Winback Tariff with the Commission that would delay Qwest’s use of its Winback program until six months after the FCC grants it section 271 authority.³ Staff does not suggest that Qwest has somehow abused the Winback program in any way or made improper use of confidential information to stall or prevent customers from switching to CLECs in the first place; rather, the Staff’s stated concern is that for the first months after Qwest enters the interLATA market, CLECs may need additional protections from unrestricted competition from Qwest.⁴

When the Staff Report was issued, Staff did not have the benefit of the *BellSouth Georgia/Louisiana Order*. In its most recent section 271 order, issued just yesterday, the FCC confirmed that winback programs are not inherently anticompetitive and therefore do not run afoul of the public interest standard of section 271. In the *BellSouth Georgia/Louisiana Order*, the FCC noted that its rules and orders have long drawn a distinction between potentially anticompetitive “retention programs,” where a carrier uses the knowledge it gains from the

² Staff Report at ¶ 281.

³ *Id.* at ¶ 283.

⁴ *Id.* at ¶ 284.

switching process of a customer's impending switch to another carrier to dissuade the customer from ever leaving, and permissible "winback programs," where the carrier is simply marketing to a customer who has already left.⁵ Retention programs present the potential for misuse of proprietary carrier-to-carrier information under 47 U.S.C. § 222(b); winback programs do not.⁶ The *BellSouth Georgia/Louisiana Order* makes clear that in the absence of any formal FCC complaint that a BOC has violated section 222(b) (and Staff does not suggest that any such complaint exists here), winback programs are legitimate and entirely consistent with section 271's public interest standard.⁷

Moreover, the *BellSouth Georgia/Louisiana Order* makes clear that if there are any allegations of improprieties concerning a BOC's particular implementation of a winback program, the section 271 docket is not the proper place to raise them; rather, they are more appropriately considered in separate state intercarrier complaint proceedings.⁸ Additionally, in discussing the concept of disputes over tariff issues, the FCC determined that "[c]oncerns such as

⁵ See Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Communications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, FCC 02-147, at ¶ 301 (May 15, 2002) ("BellSouth Georgia/Louisiana Order") (citing *Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115; *Implementation of the Non-Accounting Safeguards Section of 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket, No. 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, ¶¶ 7, 65, 77 (1999)).

⁶ *Id.* at ¶ 302. Moreover, Qwest's Winback program makes no use of proprietary carrier-to-carrier information. Qwest's Winback program works as follows: When a customer contacts Qwest to disconnect service, Qwest's Retail organization asks its customer why he or she is electing to disconnect, and if the customer provides a response, that response is tracked. Among the reasons provided by customers is that the customer is opting to shift to the service of a CLEC. Qwest maintains a tracking database of disconnect reasons and is able to sort that database to pull a report of those customers who have left Qwest for a competitor. (No information regarding the CLEC to which the customer has opted to migrate is retained in Qwest's Retail systems, nor is that information available through any other means.) That list is subsequently used as a basis for a follow-up contact with the customer to inquire whether he or she is satisfied with the CLEC's service and to offer an incentive if the customer would consider returning to Qwest.

⁷ *Id.* at ¶¶ 302-303.

⁸ *Id.*

this one, which relate to the reasonableness of [the BOC's] . . . tariffs, are beyond the scope of a section 271 proceeding.”⁹ Therefore, disputes over tariffed services should be addressed in separate proceedings from the 271 docket. Additionally, the FCC noted the “specialized nature of the section 271 process”¹⁰ and Qwest believes that “these issues would be more appropriately resolved in a different proceeding.”¹¹

Qwest notes that this Commission had already considered Qwest’s winback tariffs multiple times in separate tariff proceedings, and it has refused to find those tariffs to be anticompetitive and always approved them. For instance, in 1999, AT&T objected to Qwest’s Winback program for reasons that echo Staff’s concerns here: “the establishment of . . . [a Winback] program in local exchange markets will necessarily delay or thwart the development of competition.”¹² The Commission approved the tariff in spite of AT&T’s argument.¹³ Given that the Commission has already considered these concerns, there is no reason to re-litigate them now as part of the public interest inquiry.

The Commission’s refusal to find Qwest’s Winback Tariff to be anticompetitive is exactly right. Far from being “anticompetitive,” the Winback program is nothing more than recognition that competition exists in Qwest’s marketplace. The FCC echoes this conclusion in its most recent section 271 approval order, as discussed above. This incentive program may be

⁹ *Id.* at ¶ 305.

¹⁰ *Id.* at ¶ 208.

¹¹ *Id.* (determining that an interconnection issue addressed therein should be addressed in a different proceeding).

¹² Letter from AT&T to Chairman Irvin, *Re: U S WEST Competitive Response Program, Docket No. T-0151B-99-0061*, at 3 (Mar. 8, 1999).

¹³ Order, *In the Matter of the Tariff Filing of U S WEST Communications, Inc., Tariff Pages Filed Regarding the New Competitive Response Program*, Docket No. T-01051B-99-0061 (Mar. 15, 1999). The Staff recommended approval of the tariff at that time. *Id.* at ¶ 11.

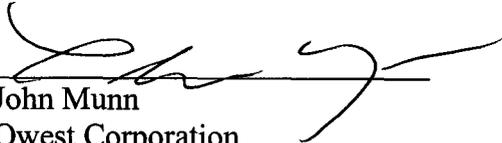
invoked only *after* Qwest has lost a customer to a CLEC. This program is not, and cannot, be used to discourage a Qwest customer from electing to migrate to a competitor.

Only after a customer has left Qwest, experienced the service of a CLEC, and concluded that the CLEC service has not met expectations will the Winback incentives come into play. (Importantly, these same incentives are available to resellers.) Cox, the primary complainant regarding Qwest's program, does exactly the same thing. Barring Qwest from using this normal competitive activity just to give the CLECs a running start is pro-competitor, not pro-competition.

CONCLUSION

For the foregoing reasons, Qwest respectfully requests that Staff reconsider and remove its proposal that Qwest should be required to suspend its Winback program for six months after the receipt of its section 271 authorization as a condition of the Commission's recommendation that Qwest's application is consistent with the public interest in this section 271 proceeding.

RESPECTFULLY SUBMITTED this 16th day of May, 2002


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