BEFORE THE ARIZONA CORPORATION COMMISSION

ARIZONA CORPORATION COMMISSION
DOCKETED
JUL 26 2001

IN THE MATTER OF INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH CERTAIN WHOLESALE PRICING REQUIREMENTS FOR UNBUNDLED NETWORK ELEMENTS AND RESALE DISCOUNTS.

NOTICE OF FILING

Cox Arizona Telcom, L.L.C. hereby files the attached Summary and Surrebuttal of Dr. Francis R. Collins.


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SUMMARY OF TESTIMONY AND
SURREBUTTAL OF FRANK COLLINS

SUMMARY

Initially, Cox is withdrawing the portion of my direct testimony that addressed specific input factors to the Qwest cost model and conducted a “recalculation” of loop rates using Qwest’s own investment model. That portion of the testimony focused on the initial position Qwest set forth in its March 15, 2001 filings in this docket and contrasted Cox’s analysis with that position. Since that time, Qwest has made numerous modifications to its loop price analyses, including to such things as its pricing zones. Although Cox does not agree with Qwest’s modifications, Cox does not intend to prepare a new analytical comparison with Qwest’s new position. Cox is withdrawing the direct testimony at page 18, line 1 through page 25, line 7, as well as Exhibits FRC-E-1 through FRC-I.

My remaining testimony points out that the Qwest’s proposals in this docket physically, economically, and technologically isolate tenants in business and residence multi-dwelling units (MDUs) to such a significant extent that those tenants will not be able to benefit from the competition in the provision of local exchange services intended by Congress with its passage of the Telecommunications Act of 1996 (the “1996 Act”). Qwest’s existing MTE/MDU configurations – which often require CLECs to obtain access to Qwest-owned campus wire or inside wire – create a blockade to the benefits of competition for MDUs, particularly given Qwest’s proposed subloop pricing.

I recommend that the Commission adopt the MDU gateway depicted in Exhibit FRC-D where both the Minimum Point of Entry and the point of Demarcation meet FCC requirements, are located at the property line of campus properties and located inside single building units at the closest possible point to an accessible outside wall as is feasible. I further urge the Commission to allow property owners to purchase the
telecommunication facilities on their property at net book value, just as the California
Public Utilities Commission has done.

Qwest’s pricing proposals also will put in motion a longer range strategy that
could allow Qwest to maintain market dominance forever. This longer term strategy uses
pricing artifacts – the “fill or utilization factor”, the “sizing factor”, and the “gradation of
allowable cable sizes” – to recover total investment costs on essential technological
elements necessary for competition while Qwest remains the super-dominant service
provider. Specifically, this strategy provides Qwest with a zero dollar investment cost
basis for outside plant facilities going forward by loading all of the investment cost on a
small part of the total installed capacity that has caused that cost. Qwest then can enjoy
the balance of the capacity (“goods on the shelf”) free of investment cost.

The notion of allowing Qwest to use its market dominance to recapture all of its
outside plant investment over a significantly smaller number of units of capacity than
have been installed (and which caused the investment costs), establishes barriers to
market entry and threatens to force out new market entrants currently in business. I,
therefore, urge the Commission to require Qwest to capture their investment costs over
all but ten percent (10%) of the capacity installed that has caused that cost. The ten
percent (10%) difference will provide a buffer for administrative and other costs of
Qwest.

SURREBUTTAL

Q. ARE YOU THE SAME DR. COLLINS WHO FILED DIRECT
TESTIMONY IN THIS DOCKET?
A. Yes.

Q. HAS YOUR EMPLOYMENT OR QUALIFICATIONS CHANGED SINCE
THAT FILING?
A. No, not in any substantial way.
Q. DR. COLLINS, ON WHOSE BEHALF HAVE YOU FILED YOUR SURREBUTTAL TESTIMONY?

A. My surrebuttal testimony is presented on behalf of Cox Arizona Telcom, L.L.C. ("Cox"), which continues to be a facilities-based provider of local telecommunications services in Arizona.

Q. DR. COLLINS, WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to demonstrate that the Qwest rebuttal of my direct testimony fails to provide a compelling basis for the Commission to reject the recommendations in my direct testimony with respect to MDU/MTE issues and issues related to the development of per unit loop cost. In fact, most of the rebuttal testimony merely describes the problem, as I have set it out in my direct testimony, and does not address a viable solution. I have presented a viable solution in my direct testimony.

Q. DR. COLLINS, WOULD YOU ADDRESS THE REBUTTAL TESTIMONY FILED BY QWEST WITNESS MR. OVERTON?

A. Mr. Overton suggested that tenants access to competitive service providers could be provided by any one of four wiring architectural options made available by Qwest under Qwest's Cable Wire Service Termination Policy (CWSTP). The essence of Mr. Overton's rebuttal is a description of these four options and a claim that any of them provide access to competition. I note that all of the options are basically the same as those presented and discussed in my direct testimony and depicted in Exhibits FRC-C-1 to FRC-C-4.

The first option presented by Mr. Overton is depicted in my direct testimony Exhibit FRC-C-1 with an added competitive disadvantage in that the MPOE has been moved away from the property line and located and combined...
with the SNI (the combination identified by Mr. Overton as an MTE NID.) All of the competitive physical, technical, and economic disadvantages presented in my direct testimony apply to this option. Additionally, there is the added competitive disadvantage of Qwest’s competitors having to place cable across private property to reach the MTE NID location if they choose, for economic reasons, not to obtain access to Qwest’s facilities at the SAI.

The second option presented separates the NID (now called “demarcation point”) from the MPOE and locates it on each floor of a multi-story building. Qwest maintains ownership of the cable (named riser cable) between the MPOE and the NID/demarcation point on each floor. This option is presented and discussed in my direct testimony and further depicted in Exhibit FRC-C-3. Once again this option presents the additional competitive disadvantage of Qwest moving the MPOE from the property line to the building so that other providers must place outside plant facilities across the private property to reach the MPOE. The anti-competitive aspects of this configuration presented in my direct testimony apply directly to CWSTP option 2. The added physical, technical, and economic competitive disadvantage of Qwest’s moving the MPOE from the property line to the building also exists.

The third CWSTP option presented by Mr. Overton creates an even more severe competitive disadvantage for CLECs. In this option, Qwest has required its facility-based competitors to overlay the outside plant on private property, to overlay the riser cable in the building, and to overlay the horizontal cable on each floor which connects to the individual business or residence units. Qwest has accomplished this by locating the NID/demarcation point within each unit. This “option” has been presented and its anti-competitive nature discussed in my direct testimony and its architecture is depicted in Exhibit FRC-C-4. Again, this option
has the additional competitive disadvantage of Qwest moving the MPOE from the property line to the building.

Mr. Overton’s discussion of CWSTP option 4 indicates that the MPOE is located at the property line making physical access easier. However, Qwest now requires a Field Connection Point (FCP) which raises the physical and economic barrier. Additionally, the cable between the MPOE and the tenant may need to be leased from Qwest.

Q. **DO ANY OF THE OPTIONS PROVIDED BY QWEST LEVEL THE COMPETITIVE PLAYING FIELD AND PROVIDE FACILE ACCESS TO THE BENEFITS OF COMPETITION TO TENANTS?**

A. No, none of them clearly provide the architecture depicted in Exhibit FRC-D of my direct testimony. That configuration guarantees competitive neutrality and facile access to competition by tenants.

Q. **DR. COLLINS, WOULD YOU DISCUSS THE REBUTTAL TESTIMONY OF QWEST WITNESS MR. BUCKLEY?**

A. Mr. Buckley apparently misunderstood my direct testimony regarding the sizing of cable used to provide telephone service. His description of the lack of congruence between “sizing factors” and “pair assignment factors” is accurate and recounts my discussion of that issue but misses the essential point made in my direct testimony and clouds the real issue to an even greater extent. That real issue is how the investment in cable is recovered!

Cox believes that the investment should be recovered over all of the plant units, in this case subscriber loops, that cause the cost. Qwest, based on its manner of computing cost per unit, believes that the cost should be recovered over only a fraction of those installed units – those in service or soon expected to be in service. What is the significance of that difference?
In the Cox position, each subscriber loop carries its own cost and that cost is recovered only when it is placed in service. Unused loops, "goods on the shelf" have unrecovered cost consequences that must be considered in doing plant design. This is what Cox and the other Qwest competitors face.

In the Qwest position all of the investment is recovered by active customers, those making up the "fill". I note that such investment, if made when Qwest has market control, assures Qwest of full cost recovery based on only part of the implemented plant. The remainder of the capacity – the difference between the "fill" (only a portion of the capacity of the plant) and the total capacity -- sits on the shelf absent investment cost. Qwest could literally give those loops away and still have full cost recovery.

The difference between the two positions is clear. The Qwest position allows them to obtain full investment recovery while they have market dominance and then "investment free” goods on the shelf to be used when (and if) competition increases. These investment cost free loops can be used to perpetuate Qwest’s market dominance as, for example, in underpricing the market.

Q. DR. COLLINS, QWEST WITNESS MR. FLEMING, IN HIS REBUTTAL TESTIMONY ON PAGES 101 TO 104, DISCUSSED THE PRICING TREATMENT OF WIRE ON PRIVATE PROPERTY. WHAT IS YOUR OPINION OF THAT TESTIMONY?

A. Mr. Fleming opined on several points. The first is that Campus Wire should be priced at the same level as distribution cable. This opinion is merely a restatement of Qwest’s current attempt to drag cable on private property into its network. Premise cable, including campus wire, has historically been treated differently than distribution cable because its nature is entirely different. A telling point in support of that position is that Qwest has historically required the property owner to pay for the premise wire infrastructure (conduit placement and the like) in
which the cable is placed. There are no second party payments for infrastructure
to support the placement of distribution cable. The cable on private property is
intended only to serve customers at that property. Distribution cable is designed to
be used and reused as the customer location pattern within the distribution area
changes.

Mr. Fleming also cited the fact that no cost models presented in the Docket
included the design of a campus arrangement that was different than the
distribution configuration in support of his position. In fact, the models were
designed to represent distribution plant and not cable on private property. The
models were forced fit into a representation of campus wire (or building wire) by
simply and erroneously extending them onto the private property. They did not
model for campus wire because they were not intended to be used for campus
wire.

Mr. Fleming opined that competition would “be impaired in non-MTE
distribution areas if MTE’s are removed from the calculation of the average
subloop distribution costs and priced separately. “He continues with the claim that
“There is no doubt that the cost of serving MTEs whether they consist of a single
large building or numerous smaller building[s] on a single contiguous piece of
property is relatively low when compared to the costs of serving many other types
of distribution areas.” Cox agrees that the costs are lower and especially so when
the property owner is charged for the bulk of the installation as is necessarily so
when the property owner pays for the infrastructure. However, the claimed sub-
loop price for the “last 300 feet,” such as the campus wire, conflicts with the lower
cost notion.

As indicated in my direct testimony Cox does not agree that competition
will be impaired, and demonstrates how the opposite is true. Mr. Fleming offered
no explanation of how competition would be impaired.
Finally, Mr. Fleming summarily suggested (p. 103, lines 18-22) that removing the lower cost of serving MTEs from the average loop cost computation would require a revision of costs for other distribution areas. However, he gave no indication of the relative impact nor did he indicate whether this result was good or bad. The fact is that Cox's recommendations to the Commission would fully compensates Qwest for the remainder of its investment in those facilities (such as campus wire) and consequently makes Qwest financially whole with respect to them. There is no point in claiming that removal of fully compensated plant from an unrelated computation has an effect on that computation. If averages are meaningful, than the distribution cable costs should be averaged and the cable on private property costs should be separately averaged. They should not be lumped together in an apples and oranges mixture.

Mr. Flemings rebuttal testimony provides only unfounded opinion, not evidence, regarding Cox's position in this docket and the Commission should not give his rebuttal testimony any weight in its decision.

Q. IN VIEW OF THE FACT THAT YOU HAVE WITHDRAWN THAT PART OF YOUR DIRECT TESTIMONY THAT DEALS WITH COSTS, DO YOU HAVE ANY COMMENTS ABOUT THOSE ISSUES THAT WILL BE HELPFUL TO THE COMMISSION?

A. Yes, I have a few comments that I believe will be helpful and they involve process and policy issues as they effect the market in Arizona for telecommunication services.

With respect to process, the changes in position filed by Qwest and Staff have resulted in a moving target. It is not unusual for the Parties to attempt to negotiate a settlement of issues that may result in cost numbers different from those calculated by various models. But those compromises are usually done off line. While the negotiations are underway, the Docket proceeds based upon the
information that was filed and which represents the thoughtful position of the Parties. This gives the Docket a structure that the Commission can look to.

In this instance, major changes in cost structure and zone configuration have materialized, each new version contradicting and denying the legitimacy of the earlier one, and being filed as the new formal position of the Parties, not a negotiation position. Cox found the process unusual and believes that it does not result in a record upon which the Commission can base a rational decision. This is the major reason Cox withdrew its cost testimony.

Cox is a facility-based provider that has significant investments in telecommunications infrastructure in Arizona. These investments were made against a business model that depended on a fair and equitable development of the competitive market for services. At this juncture, Cox has some policy concerns.

If UNE rates, particularly loops, are divorced from cost and set too low, it changes the market from one which encourages facilities investment to one which encourages arbitrage. History has shown that competition which arises only because of an artificial gap between retail cost and wholesale rates -- thus allowing an arbitrage business to develop -- is not long lasting. In the meantime, the arbitrageurs destroy the market for companies that have invested in infrastructure, such as Cox. The inevitable result is a failure of competition.

On the other hand, if UNE rates are set too high -- that is significantly above cost -- it raises the barrier to market entry for companies that may eventually become facilities based and invest in Arizona’s infrastructure.

Rates should be set at a level that does not invite arbitrage as a way of doing business and at the same time shows that increased margins between UNE cost and retail prices can be obtained by infrastructure investment. To obtain this increased margins, companies should move from the use of UNEs to facilities investment. These undefined "optimum" rates are what the Commission should
attempt to establish. Because of the reasons cited above, Cox does not know how
the current record provides a basis upon which to determine what those rates
should be.

Q. IN LIGHT OF THIS REBUTTAL TESTIMONY, WHAT IS YOUR
RECOMMENDATION TO THE COMMISSION?
A I believe that the Commission will best serve the telephone service consumers in
Arizona by following the recommendations made in my direct testimony as to
MDU/MTE access and computing subscriber loop investment assignments.