

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of)	<u>DOCKET NO. 03-049-49</u>
QWEST CORPORATION for Pricing)	
Flexibility for Residence Services in the)	<u>FINAL ORDER ON</u>
Areas Served by 44 Central Offices)	<u>RECONSIDERATION</u>

ISSUED: April 20, 2004

By The Commission:

On March 25, 2004, we issued an order on reconsideration reopening this docket to further examine additional evidence concerning the availability of the same or substitutable telecommunications services for Qwest basic residential telephone service within Comcast service areas. Since our March 25th order, we have considered the impact that further proceedings in this docket, on this limited issue, will have on other proceedings and compliance filings which are required by our rules. Notably, pursuant to Rule 352, Qwest is required to submit its Price Cap Regulation filings for price cap adjustments, indices and supporting material on April 15th of each year. Until a final order is issued in this docket, compliance with Rule 352 is frustrated. We have determined that we will vacate our March 25, 2004, Order, conclude this docket and issue a final order on reconsideration without further proceedings in this docket.

Continued availability of alternative services to Qwest's basic residential telephone service will be treated in a separate docket

We have examined the statutory provisions by which we may regulate public utilities and our regulation of pricing flexibility for incumbent telephone companies to determine whether there is a better way to manage our proceedings, provide the parties with an opportunity to address the newly arisen issue concerning Comcast's services, and still meet the objectives of the regulatory regime for telecommunications services and our administrative rules. We have

concluded that we will issue this final order on reconsideration, by which we reaffirm our prior determination that Qwest is granted pricing flexibility for what we have termed basic residential telephone service within Comcast service areas. We will address the service availability issue raised in the Committee of Consumer Services' Petition for Reconsideration in a separate docket.

We conclude that this action will permit fulfillment of the price cap regulation process while permitting interested parties an adequate opportunity to address the issue raised by the Committee of Consumer Services (Committee). Proceeding in this manner will enable all parties to prepare for and present evidence for our consideration of whether the same or substitutable services remain available to consumers. We may examine the issue of the availability of such services pursuant to our authority to rescind or amend prior orders, U.C.A. §54-7-13, and revocation of pricing flexibility, U.C.A. §54-8b-2.3(9)(a). If the availability of such services is different from that which we believed when we reached our original conclusion in our October 31, 2003, Order, we will entertain consideration of whether modification of pricing flexibility may be warranted.

As this order constitutes our final order on reconsideration, we address additional issues raised in the Committee's Petition as we deem appropriate on reconsideration.

Availability of Competing Services

The Committee asserts that only in the case where customers can buy any telecommunications service à la carte from any or multiple providers can pricing flexibility be granted. Meaning that only if a customer could buy any given service from any given local exchange carrier (LEC), regardless of whether the customer buys basic service from that LEC or not, should pricing flexibility be granted. The Commission believes it highly improbable that the legislature contemplated a customer buying basic service from company "A", caller ID from

company “B”, and call waiting from company “C”, and voice mail from company “D,” etc. when it enacted the statutes governing pricing flexibility. Paragraph 1.4 of the Committee’s request contemplates a situation that is unlikely to occur unless significant, unanticipated, changes to the industry standard telecommunications network design are made. Currently it is not feasible for any company (including Qwest) to offer services on an à la carte basis. If this were the standard, Qwest would never receive pricing flexibility for any service because features and services are tied to the loop and port. While it is possible to conceive of a day when Qwest or competitive local exchange carriers (CLECs) are able to provide vertical services to another company’s customers through sub-loop unbundling, it is certainly not the practice of any companies currently, and the Commission does not interpret the current statutory provisions to require such before pricing flexibility may be granted.

Neither does the Commission believe that the legislature, in passing the pricing flexibility statute, contemplated or expected that all competitors would offer the exact services as Qwest. Rather, competitors would offer services that customers might prefer in lieu of Qwest’s services. The very use of the language of choice suggests that comparable alternatives, rather than exact replicas, will be available. Utah Code 54-8b-2(15)’s definition of “same or substitutable” is phrased as comparable services; not identical services. Pricing flexibility may not be available for services to which the marketplace does not offer customers a choice that is either the “same or substitutable”, or preferable. Where comparable alternatives are offered, pricing flexibility is available and can be approved by the Commission.

As the Commission previously found, customers who want more than basic residential service (i.e., dialtone and the ability to complete calls, with no additional features) have adequate alternatives. We do not deviate from our prior conclusion that the only customers not

being offered acceptable alternatives are those who want to use only basic residential service in areas not served by Comcast.

IntraLATA Service

To clarify the point raised by the Committee in paragraph 1.5 of its request, IntraLATA toll is not considered an integral part of basic residential service for two simple reasons. First, Commission Rule R746-356 identifies it as a stand-alone service. Second, if it were included as a part of basic residential service, very few customers would be protected by the exception the Commission created for basic residential service. We reiterate that whether a basic residential service customer chooses to purchase IntraLATA toll from Qwest or some other carrier has no bearing on Qwest's obligation to offer that customer basic residential service at the tariffed rate.

Herfindahl-Hirschmann Index (HHI)

The Committee implies that the Commission has rejected the use of the Herfindahl-Hirschmann Index (HHI) as an analytic tool. The Committee's point goes too far. The Commission finds the information useful, but we also found (taking note of the previous six annual telecommunications reports) that the HHI shows market concentrations in the Utah telecommunications market (in Qwest's territory) have fallen in each and every year for which the HHI has been calculated. The HHI data shows that while the market is concentrated, steady progress toward more, not less competition, has occurred.

List of Services

The Committee complains that the Commission has not listed each and every service, in our Order, for which we granted pricing flexibility. The set of services is clearly defined on the record by Qwest's filings, beginning with the list of specific services contained in Qwest's

application. Our order specifically identified the Qwest services for which we did not grant pricing flexibility. The remaining services listed in the application may be flexibly priced. These flexibly priced services will be clearly identified by Qwest in its price list filed in compliance with our order. Should the Committee believe that Qwest has included services for which we have not granted pricing flexibility, the Committee can identify them in any objection to Qwest's price list filing.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Our Order dated March 25, 2004, by which we reopened this docket, is hereby vacated.
2. We make no modification or amendment to our October 31, 2003, Order for any of the issues raised by the Committee's Petition for Reconsideration.
3. The Commission will open a separate docket in which we will explore the continued availability of the same or substitutable services in Comcast service areas.

Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 20th day of April, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

GW#37930