

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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| In the Matter of the Comcast |) | <u>DOCKET NO. 04-2383-01</u> |
| Serving Area |) | ORDER SUSPENDING |
| |) | SEPTEMBER 20, 2004, ORDER |
| |) | |

ISSUED: October 22 2004

By The Commission:

This Docket was opened to investigate Comcast's offering of local exchange only phone service.

Whether Comcast was actually offering a local telephone service was raised by the Committee of Consumer Services in Docket 03-049-49, relative to Qwest Corporation's application for pricing flexibility in that docket. On September 20, 2004, in this docket, we issued a tentative report and order (September 20 Order) closing this docket, after concluding the Comcast does offer stand-alone local telephone service. On October 8, 2004, the Committee of Consumer Services (Committee) filed an Objection to and Request for Reconsideration of our September 20 Order; the Committee also filed a Memorandum, containing its comments, explaining its objections and concerns. On October 20, 2004, Qwest Corporation file its response Opposition to Committee Objection and Request for Reconsideration. Our September 20 Order was a tentative order, which would become effective 20 days after issuance absent meritorious protest. We consider the Committee's October 8, 2004, filings to be sufficiently meritorious to suspend the effective date of the September 20 Order. We do so as a cautionary measure, not so much that the Committee's argument is directly meritorious on the issue addressed.

The context of the issue addressed in this docket, whether Comcast does or does not offer stand-alone local telephone service, is best understood by the Committee's December, 2003, Petition for Reconsideration filed in Docket 03-049-49. In that docket, the Commission granted Qwest Corporation (Qwest) pricing flexibility for some residential telephone services, based in part on our understanding that Comcast made available a basic, stand-alone local telephone service offering. The Committee's position, however, was that while Comcast may have grand-fathered

customers with stand-alone telephone service, for those subscribed prior to July 5, 2001, Comcast no longer offered a stand-alone service after that date. The Committee argued that Comcast required new or changing customers to subscribe to local service combined with a long distance service package or another package of features along with local service. See, Committee Petition for Reconsideration, Paragraphs 1.2, 1.3, and 2.2. In our April 20, 2004, Final Order on Reconsideration in Docket 03-049-49, we indicated that we would address the Committee's contention concerning the continued availability of a stand-alone local telephone service offering in another docket. See, Final Order on Reconsideration, pages 1 and 2. This docket was intended to be the docket wherein we examined whether Comcast no longer offered stand-alone local service, without a requirement that a customer also take other service offerings.

In this docket, we have received information concerning the Division of Public Utilities' (Division) investigation addressing Comcast's offering. The Division has shown that Comcast continues to offer and customers can obtain a stand-alone local only telephone service. This conclusion is contrary to the Committee's Docket No. 03-049-49 position and argument that Comcast offered no stand-alone local telephone service. In its October 8, 2004, submissions, we find no Committee argument, point or concern premised on a contention that Comcast does not offer a stand-alone local telephone service offering to existing or new customers. We assume from this that the Committee no longer maintains that Comcast has no offering for a stand-alone local only telephone service. We conclude, from the lack of any objection or comment on this issue, that the Committee now acknowledges that Comcast does have such a stand-alone local service offering available. That is the issue we intended to address. To the extent that our view of the Committee's position on the availability of a stand-alone local service may be in error, that is that the Committee still maintains that Comcast does not offer a stand-alone local service only offering, we will suspend the effect of our September 20 Order. We will provide the Committee, or any other interested person, an opportunity to establish an evidentiary record showing that Comcast does not offer local telephone service without also requiring a customer to subscribe to another package of services in addition to the local service.

In its October 8, 2004, submissions, the Committee does raise concern regarding the ability to compare

the geographic areas in which Qwest may endeavor to flexibility price its own basic, stand-alone local telephone service with the areas in which a person has access to Comcast's local telephone service. Relevant to this discussion, in Docket 03-049-49, we granted pricing flexibility for Qwest's basic, local exchange residential telephone service limited to the Comcast telephone service areas in which Comcast offered the competing telephone service, not in the Qwest exchange areas contained in the original Qwest Petition. Our intent is to permit Qwest to exercise pricing flexibility where customers do have an alternative service available. In this regard our intention is similar to the concern expressed by the Committee, pricing flexibility for Qwest's own basic local only telephone service is available where Comcast's competing service is available. This is the reason why we did not use Qwest exchange areas in Docket 03-049-49; the acknowledgment made in this docket that US Postal service zip code areas do not necessarily coincide with the areas served by Comcast; and the recognition that service areas for which pricing flexibility may be justified will change as telecommunications companies alter the services and areas in which they may intend and be able to offer such services, subjecting the grant of pricing flexibility to modification (see, Utah Code §54-8b-2.3(9)). But for this aspect, we do not believe that this docket is the appropriate forum. Our intent here was to deal with the Committee's contention that Comcast had no stand-alone local service offering at all. The Division's investigation has shown that this contention is in error. As noted, we believe that the Committee no longer maintains that position, but afford an opportunity for any interested person to show that Comcast does not offer such service.

Wherefore, we enter this ORDER suspending our September 20, 2004 Order. Any person desiring to establish that Comcast does not offer a stand-alone local telephone service offering should file, with the Commission within 30 days from the date of this Order, a notice of intent to make such showing. If such filing is made, the Commission will then hold a scheduling conference to set a proceeding schedule to obtain a resolution of the issue.

DATED at Salt Lake City, Utah, this 22nd day of October, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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