Qwest
607 14th Street NW, Suite 950
Washington, DC 20005
Phone 202.429.3120
Facsimile 202.293.0561

Melissa E. Newman
Vice President-Federal Regulatory

EX PARTE

October 28, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112*; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*
CC Docket No. 00-175

Dear Ms. Dortch:

On October 28, 2003, Melissa Newman representing Qwest Communications International Inc. ("Qwest"), and Glenda Weibel, James Hannon and Mark Pitchford also of Qwest, via telephone, met with the following Federal Communications Commission staff: Renee Crittendon, Brent Olson, Pamela Megna, Ben Childers, Michael Carowitz, William Kehoe and Jon Minkoff of the Wireline Competition Bureau. The attached document concerning the Commission's May 19, 2003 Further Notice of Proposed Rulemaking[1] was used during the discussion.

In accordance with Commission Rule 47 C.F.R. § 1.49(f), this *ex parte* letter is being filed electronically for inclusion in the public record of the above-referenced proceedings pursuant to Commission Rule 47 C.F.R. § 1.1206(b)(2).

Sincerely,
/s/ Melissa E. Newman

cc:
Renee Crittendon (renee.crittendon@fcc.gov)
Brent Olson (brent.olson@fcc.gov)
Pamela Megna (pamela.megna@fcc.gov)
Ben Childers (ben.childers@fcc.gov)
Michael Carowitz (michael.carowitz@fcc.gov)
William Kehoe (william.kehoe@fcc.gov)
Jon Minkoff (jon.minkoff@fcc.gov)

Attachment

---

[1] In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, 18 FCC Rcd 10914 (2003) (FNPRM).

Qwest®

Spirit of Service

272 Sunset FNPRM Ex Parte
CC Docket 00-175
WC Docket 02-112

October 28, 2003

SUMMARY

I. Qwest has no Market Power in Either the Provision of Local Exchange Service or Service Packages

II. Service Packages Do Not Represent a Separate and Distinct Market

III. Regulating BOC Service Packages Would Limit Competition and Harm Consumers

Qwest. Spirit of Service

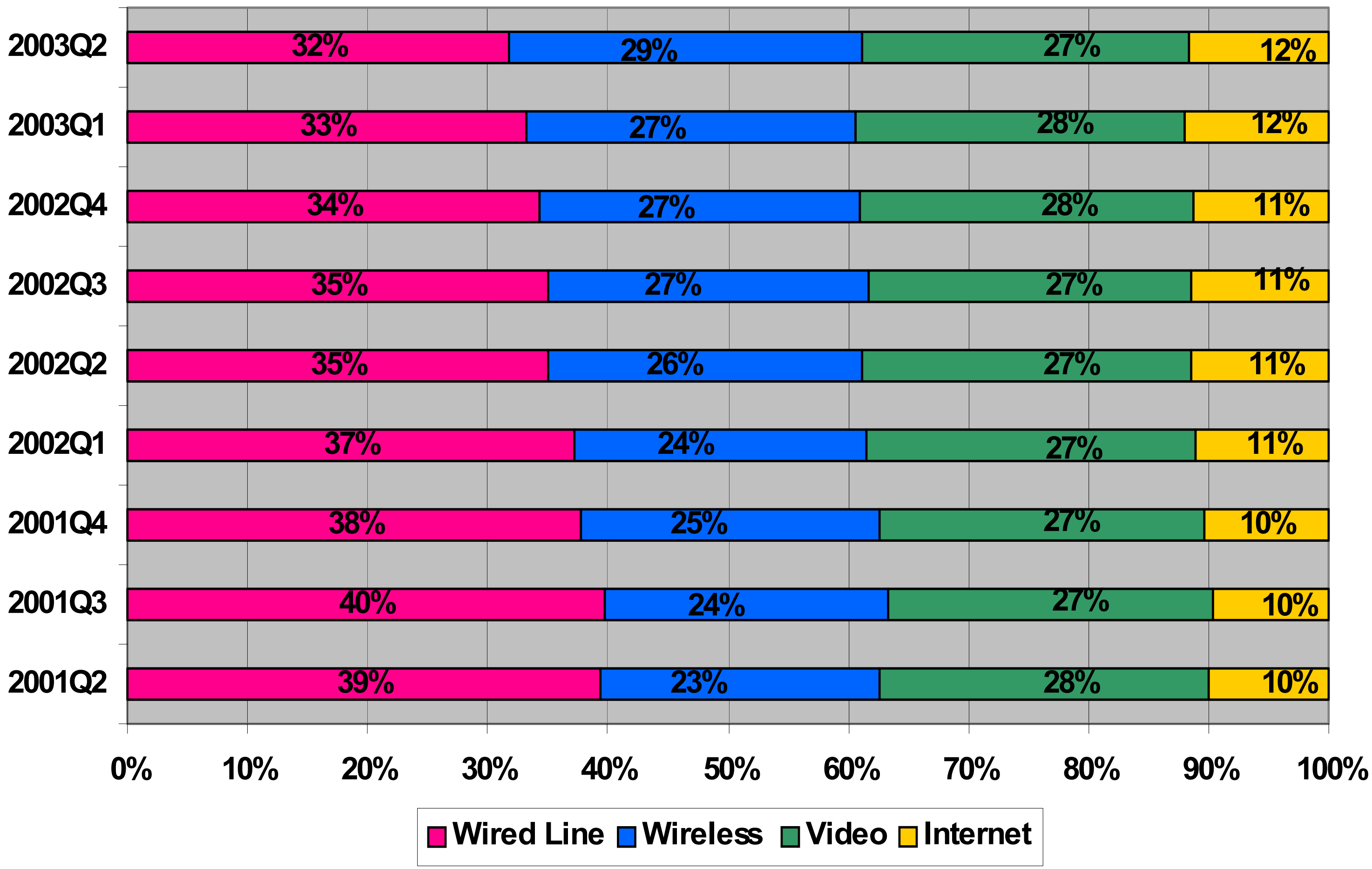
I. Qwest Has No Market Power in Either the Provision of Local Exchange Service or Service Packages

Competitors Serve a Majority of the Connections in Qwest's Service Area

- Connections is a measurement of the number of touch points a company has with a household. It is defined as the number of wired lines, number of wireless phones, and high speed Internet connections with a company.
- Connections are provided by traditional local exchange carriers, wireless providers, cable providers, CLECs, and other competitive providers.
- Qwest only serves a minority of the connections within its service area:
  - 33% in Denver
  - 22% in Omaha
  - 35% in Seattle
- In the six months ending with August 2003, Qwest has lost over 470K residential telephone lines. Wireline competitors gained 174K of those; the remaining lines moved to substitutes (wireless and high speed internet).

Household Share of Wallet by Connection - National

SOURCE: TNS 2Q03 Residential National Report



* Wired Line includes Local, Toll and Long distance Spending

Qwest
Spirit of Service

Wireless Substitution

***Wireless Providers* continue to capture a growing share of both local exchange and long distance markets.**

- FCC data indicate that wireline long distance usage has fallen from an average of 71 minutes per month in 1995 to 41 minutes in 2002.
- CTIA data indicates that wireless minutes of use (both local and long distance) have grown over 1600 % from June 1995 to June 2002.
- Recent surveys of wireless phone users in Utah and Iowa found that wireless service is often substituted for Qwest's wireline service.
  - Approximately 25% of the personal and business wireless phone users in Iowa reported not having a traditional landline phone at their home or place of business.
  - If wireless did not exist, 70% of the personal wireless phone users and 45% of the business users indicated that they would install traditional landline service.

Qwest. Spirit of Service

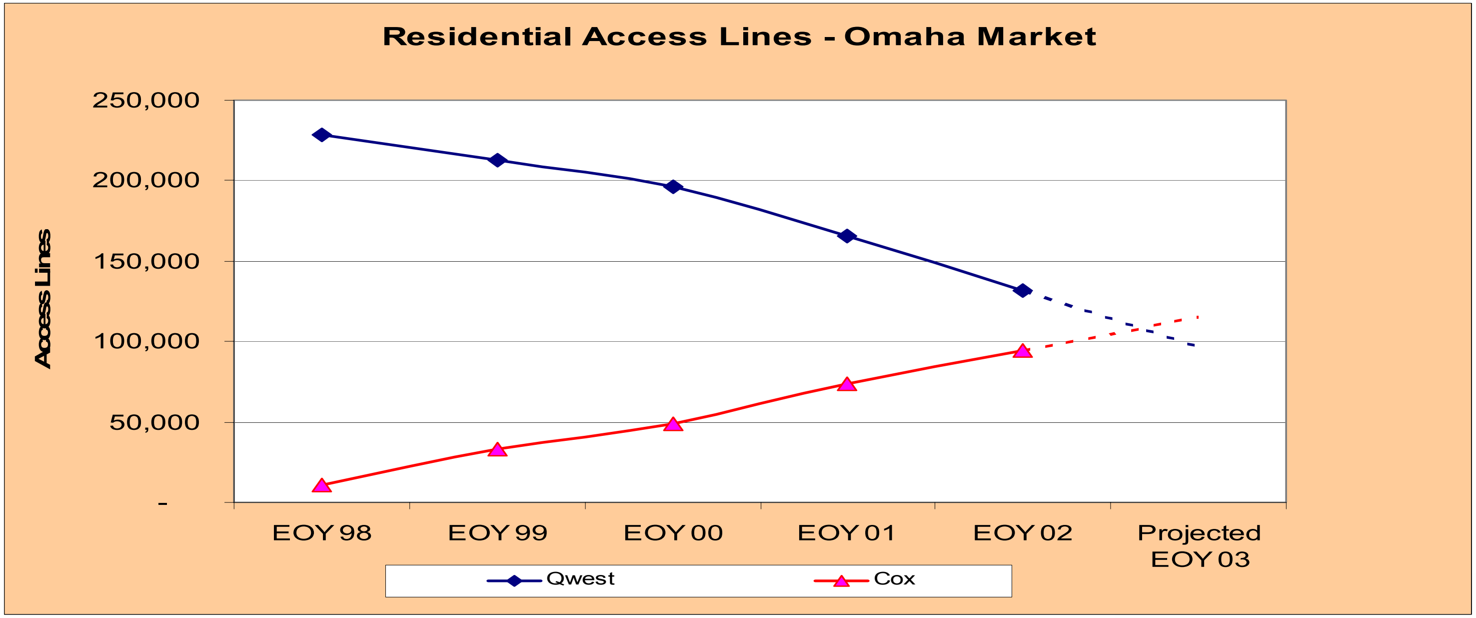
Wireless Substitution

- In the absence of cellular service in Iowa at least 75% of the personal wireless calls and 60% of the business calls would have been made on traditional landline phones.
- In Utah, approximately 27% of the wireless phone users are substituting wireless service for home residential wireline service.
  - 12.0% of Utah wireless customers previously had residential wireline service but no longer do (“cut the cord”).
  - 9.2% of Utah wireless customer have never subscribed to residential wireline service but say they would if wireless phone service were not available.
  - 5.5% of Utah wireless customer say that they have terminated service on a second home line “exclusively” because of the ability to substitute wireless service for the second line.

Cable Substitution

Cable Providers **offer service packages containing local exchange, long distance, internet access and cable service.**

- Cox in the Omaha market area offers these packages including an unlimited calling plan for $49.95 a month (in addition to the purchase of a cable package which ranges from $37.50 to $74.85 per month).
- As shown in the following chart, the share of residential lines in the Omaha market served by Qwest has decreased dramatically.



Qwest
Spirit of Service

Cable Substitution

- Cox offers similar bundles in Phoenix and Tucson and is having similar success in those markets.
  - In the Phoenix/Mesa MSA, Qwest's share of local telephone lines has dropped by over 8% in the last 12 months and that loss is accelerating.
  - In Tucson, Cox entered the local telephone market in early summer of 2003. They offered service to 200,000 households and, since July 1, Qwest has lost over 20,000 customers in Tucson to competition – over a 10% share in less than four months.

CLEC Substitution

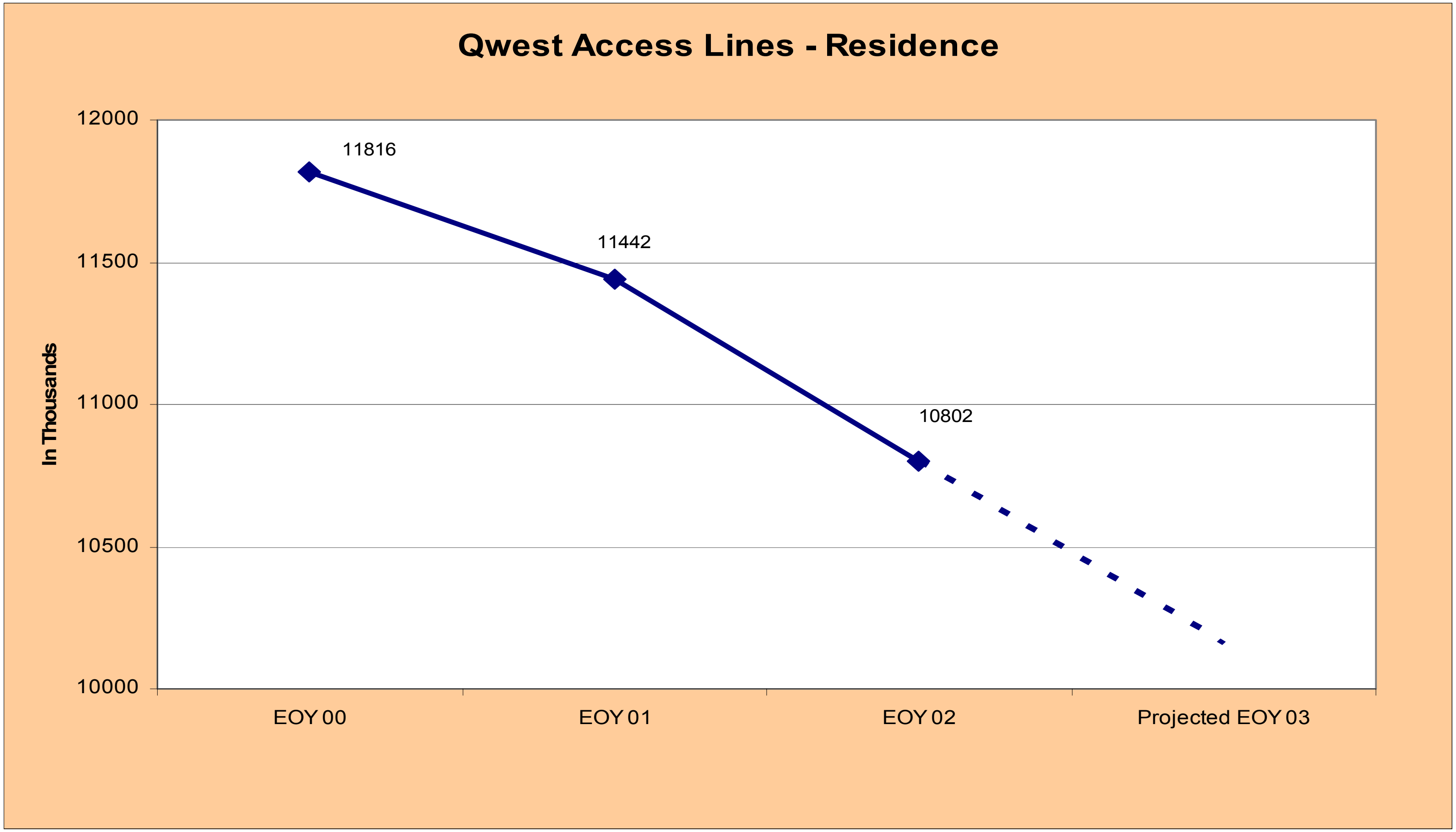
CLEC Service Packages **(e.g. AT&T, MCI, McLeod) represent a direct "landline" competitive alternative to Qwest's service.**

- CLEC packages include local exchange service and are usually based on UNEs and resale.
  - For example, in Washington between 1999 and EOY 2002, Qwest business lines decreased by 20% while CLEC purchased wholesale lines increased by over 300%.
- CLEC packages, such as MCI's Neighborhood Complete Plan, set the price standard that Qwest must respond to.
  - Many competitor service packages were available to customers in Qwest's service area prior to the grant of any Qwest Sec. 271 applications.
  - MCI's Neighborhood Complete Plan is offered at $49.99 in most Qwest states and includes unlimited local calling, unlimited long distance, call waiting, caller ID, speed dialing, three-way calling and voicemail.
- In response, Qwest, in April 2003, began offering at $49.99 per month "Simply Phone Service" which includes local line, unlimited domestic long-distance and a choice of five features. The plan is available in 12 states that have 271 approval.

CLEC Substitution

- AT&T's Residential Service was deployed in Arizona and Minnesota beginning in July 2003, prior to 271 grant in Minnesota.
  - AT&T’s One Rate Plan is offered at $49.95 per month and includes local line, choice of four features and unlimited direct dialed domestic long distance.
  - AT&T’s Call Plan Unlimited is offered at $22.95 or $23.95 per month and includes local line, choice of two or three features (depending on plan which determines price) and an option for 7¢ per minute domestic long distance at $3.95 per month.

Example: **Minnesota**	**Qwest**	**AT&T**	**MCI**	**Comcast**
Telephone line, 3-5 features, 7c LD	$24.99/mo	$27.90/mo	$37.99/mo, includes 200 LD minutes, 5c/min after	$29.10/mo
Telephone line, 3-5 features, unlimited LD	$49.99/mo	$49.95/mo	$49.99/mo	$40.99/mo, includes 300 minutes of LD



SOURCE: ARMIS Report 43-05

Qwest
Spirit of Service

II. Service Packages Do Not Represent a Separate and Distinct Market and Qwest Service Packages Do Not Confer Market Power

The availability of service packages with a long distance component does not change the "relevant market" for purposes of determining whether BOCs are non-dominant providers of interstate interLATA services.

- Relying on the DOJ's Horizontal Merger Guidelines in its LEC Classification Order, the Commission defined the relevant market as "any interstate, domestic long distance service for which there are no close substitutes, or a group of services that are close demand substitutes for each other, but for which there are no other close demand substitutes" for purposes of evaluating the market power of BOC interLATA affiliates. (See LEC Classification Order at ¶5.)
- The 1996 Act assumes that there is a separate market for interLATA long distance services - - otherwise many sections of the Act would make little if any sense (e.g., Sec. 271).

BOC service packages are merely a sum of their component parts at an overall discount – they do not represent a separate market.

- Qwest distinguishes “bundling” from “packaging” –where all service components are available individually (which is not always true with bundling).
- Component services are easily “unbundled” and may be purchased individually.
- Prices charged for Qwest’s service packages are constrained by the prices of component services and competitive offerings.
  - In offering service packages Qwest is simply responding to the bundled offerings of MCI, AT&T and others that existed prior to approval of Qwest’s Section 271 Applications.

Qwest
Spirit of Service

- Local exchange services and other Qwest regulated services are required to be made available at the same price (i.e., tariffed rates) on an individual basis.
  - In the CPE Bundling Order, the Commission found that "allowing carriers to market products and services together at a single price, but requiring them to offer the components of the bundle to consumers separately, ensures that carriers cannot restrain competition or impede customer choice." The same logic applies to allowing BOCs to bundle local and long distance service. (See CPE Bundling Order at ¶ 18.)

- The majority of Qwest's customers still purchase local exchange and long distance service on an unbundled basis.

Qwest's service packages represent "price" plans as distinct from "physical" bundling where products are physically integrated (as is often the case in the automobile and computer industries).

There is no anti-competitive harm in allowing Qwest to offer packages on an unregulated basis like our competitors do.

- No possibility of cross-subsidization with price cap and accounting regulation.
  - In allowing incumbent LECs to bundle regulated transmission services with CPE and enhanced services, the Commission found that the ability of ILECs to engage in anti-competitive cross-subsidization is minimized by state requirements that local exchange service be available at unbundled tariffed rates and the Commission's price cap and accounting rules. The same logic holds true for bundling interstate long distance services and local exchange service. (See CPE Bundling Order at ¶¶ 33-38, 45; also see LEC Classification Order.)
- No ability to raise price by restricting output.

Qwest
Spirit of Service

III. Regulating BOC Service Packages Would Limit Competition and Harm Consumers

The Commission found in other contexts that price bundling reduces carrier transactions costs, facilitates consumer choice, and encourages consumers to subscribe to new, advanced, or specialized services by reducing costs. The same reasoning applies to packaging local exchange and long distance services. (See CPE Bundling Order at ¶ 10.)

In allowing ILECs to package CPE, enhanced services and local exchange service in its CPE Bundling Order, the Commission concluded that the risk of anti-competitive behavior by ILECs is low and is outweighed by the consumer benefits of bundling. The same reasoning applies to packaging local exchange and long distance services. (See CPE Bundling Order at ¶ 12 and ¶¶ 30-38.)

Qwest Spirit of Service

The Commission also found that bundling reduces costs for consumers (i.e., in addition to any price discount) by eliminating the time and effort needed to find products and services, negotiate purchase terms, and assemble the desired combinations. (See CPE Bundling Order at ¶ 15.)

Regulating BOC local exchange and long distance service packages would harm competition by limiting customer choice and dampening price competition.

- Regulating BOC service packages would limit BOC's ability to respond to competitive offerings.
- Regulating BOC services packages would limit the variety of packages available to customers.
- Regulating BOC service packages sends the wrong signal to both competitors and customers.