

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matters of	)	
	)	
Implementation of the Subscriber Carrier	)	CC Docket No. 94-129
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
2000 Biennial Review – Review of Policies	)	CC Docket No. 00-257
and Rules Concerning Unauthorized Changes	)	
of Consumers Long Distance Carriers	)	
	)	
Qwest Corporation Petition for Waiver	)	

PETITION FOR WAIVER

Qwest Corporation (“QC”) and Qwest Long Distance Corporation (“QLD”) (collectively “Qwest”), pursuant to Section 1.3 of the rules<sup>1</sup> of the Federal Communications Commission (“Commission” or “FCC”), hereby request a limited waiver of the requirement to notify the Commission 30 days in advance of a transfer of subscribers, pursuant to Section 64.1120(e)(1) of the Commission’s rules.<sup>2</sup> In addition, Qwest requests a limited waiver of Section 64.1120(e)(3)<sup>3</sup> of the Commission’s rules concerning the requirement that the transferred subscribers be notified 30 days in advance of a change in their service provider. Qwest further requests that its waiver of these rules be granted in an expeditious manner. In support of its request, Qwest states the following.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 64.1120(e)(1).

<sup>3</sup> 47 C.F.R. § 64.1120(e)(3).

## I. BACKGROUND FACTS

On February 10, 2004, Omnetrix International, Inc. (“Omnetrix”) filed an Application To Discontinue or Curtail Jurisdictional Telecommunications Service (“Application”) with the Colorado Public Utilities Commission (“Colorado Commission”) because of financial difficulties. On April 8, 2004, a hearing was held before the Colorado Commission concerning a joint motion filed by the Colorado Office of Consumer Counsel (“Colorado Consumer Counsel”), the staff of the Colorado Commission and Omnetrix, to approve a Transition Plan to designate Qwest as the default provider and to transfer, on an expedited basis, approximately 1,350 Omnetrix customers to QC for local service and to QLD for long distance service.<sup>4</sup> While the parties, including Qwest, engaged in discussions regarding a proposed Transition Plan prior to the hearing, Qwest was not identified by the Colorado Commission as the default provider until the April 8, 2004 hearing. The expedited transfer of these customers to Qwest was approved by the Colorado Commission in order to avoid subscriber confusion and the risk of loss of telephone service to Omnetrix’s customers.

Attached to this Petition is the Order of the Colorado Commission approving the Transition Plan (along with a copy of the appended Transition Plan document that contains the details for implementing the transfer of customers).<sup>5</sup> The Transition Plan was characterized by the parties as a “Snap-Back” plan, whereby the Colorado Commission, in approving the plan,

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<sup>4</sup> Included in the Transition Plan are customers currently served by Omnetrix doing business as Home Phone Company in addition to Omnetrix customers served on the billing account numbers of Colorado Teleserv, Inc.

<sup>5</sup> See *In the Matter of the Application of Omnetrix International, Inc. to Discontinue or Curtail Jurisdictional Telecommunications Service*, Docket No. 04A-058AT, Order Granting Joint Motion to Approve Proposed Transition Plan and Request to Waive Response Time, Decision No. C04-0370, Adopted Date: Apr. 8, 2004 and Mailed Date: Apr. 9, 2004.

mandated that it be “implemented immediately upon the effective date of [the] Order.”<sup>6</sup> In endorsing the Snap-Back plan, the Colorado Commission noted that it was “a creative approach to ensure that [the Omnetrix] customers are not deprived of phone service needlessly,”<sup>7</sup> “[a matter] of paramount importance when a telecommunications provider ceases operations.”<sup>8</sup> The Colorado Commission found it to be in the public interest for Qwest to be designated as the default provider. After the Omnetrix customers are transferred to Qwest, they will be provided with a written notice of the transfer<sup>9</sup> that includes information required under Section 64.1120(e)(3), that remains relevant after the transfer, including information on their right to choose alternative service providers.<sup>10</sup>

## II. DISCUSSION

Pursuant to Section 1.3, the Commission is authorized to waive any Commission rule “for good cause shown.”<sup>11</sup> Qwest has demonstrated good cause for a waiver of Sections 64.1120(e)(1) and 64.1120(e)(3). First, Qwest has been designated the default provider by the Colorado Commission as a result of the circumstances surrounding Omnetrix’s Application. Second, Qwest was not identified as the default provider by the Colorado Commission until

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<sup>6</sup> *Id.* at 7. On page eight of the Order, the Colorado Commission indicated that the effective date of the Order is its “Mailed Date” or Apr. 9, 2004.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.*

<sup>9</sup> On April 20, 2004, Qwest filed a Motion with the Colorado Commission to revise the notice letter (a copy of that revised notice letter is attached hereto). On April 21, 2004, the Colorado Commission orally granted the Qwest Motion. Qwest plans to file subsequently with this Commission a copy of the written order granting the Qwest Motion after it is issued by the Colorado Commission.

<sup>10</sup> Pursuant to the Transfer Plan, the Omnetrix customers will be supplied with a list of alternative service providers which was compiled by the staff of the Colorado Commission and the Colorado Consumer Counsel.

<sup>11</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

April 8, 2004. Third, the Colorado Commission has ordered that the Transition Plan be “implemented immediately upon the effective date of [the] Order [that is, April 9, 2004].”<sup>12</sup> Given the totality of the unique circumstances presented by this case – specifically, that Qwest was identified as the default provider only thirteen days ago and the Colorado Commission has ordered the Transition Plan to be implemented immediately – a waiver is necessary because it is impossible for Qwest to satisfy the 30-day advance notice requirements of Sections 64.1120(e)(1) and 64.1120(e)(3).<sup>13</sup> Without the waiver, Qwest will be caught between adhering to the directives of the Colorado Commission and timely compliance with the FCC’s advance notice requirements.

In addition, in *Northeast Cellular* the D.C. Circuit Court of Appeals held that “[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”<sup>14</sup> Qwest believes that strict compliance to the FCC rules in question in this situation would frustrate the overall policy objectives upon which the Commission’s carrier change, authorization and verification procedures are based. Rather, the

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<sup>12</sup> Colorado Commission Order at 6-7 ¶ 21. The Transition Plan requires (at Section II, paragraph two) that the transition period for Omnetrix’s customers is to begin the day after the effective date of the Colorado Commission Order, and it is to end no later than 30 days after the last customer notice has been mailed by the provider of last resort.

<sup>13</sup> In connection with recently granting a waiver request of BellSouth’s that was similar in content and focus to the instant one, the FCC noted that it had “specified in [its] *Streamlining Order* that instances in which it is impossible to comply precisely with the streamlined procedures will be resolved on a case-by-case basis.” *In the Matter of 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; BellSouth Telecommunications, Inc. Petition for Waiver*, CC Docket Nos. 00-257 and 94-129, Order, DA 04-379, rel. Feb. 13, 2004, at ¶ 5 (citation omitted) (“BellSouth Order”). In that same Order, the Commission found that “in . . . special circumstances . . . waiver of the streamlined notice requirement . . . would serve the public interest.” *Id.* at ¶ 7.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166. *See also WAIT Radio*, 418 F.2d at 1159.

public interest is best served by allowing the Omnetrix customers to be transferred to Qwest, until such time as they should decide to select another carrier.

III. CONCLUSION

For the foregoing reasons, Qwest requests that the Commission grant the request for a limited waiver of Sections 64.1120(e)(1) and 64.1120(e)(3) of its rules on an expedited basis.

Respectfully submitted,

QWEST CORPORATION  
QWEST LONG DISTANCE CORPORATION

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Their Attorneys

April 21, 2004

WJ  
DM  
PM  
CC

APR 13 2004

Decision No. C04-0370

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-058AT

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IN THE MATTER OF THE APPLICATION OF OMNETRIX INTERNATIONAL, INC. TO DISCONTINUE OR CURTAIL JURISDICTIONAL TELECOMMUNICATIONS SERVICE.

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**ORDER GRANTING JOINT MOTION  
TO APPROVE PROPOSED TRANSITION PLAN  
AND REQUEST TO WAIVE RESPONSE TIME**

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Mailed Date: April 9, 2004  
Adopted Date: April 8, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. This matter was heard by the Commission *en banc* pursuant to a joint motion filed by the Colorado Office of Consumer Counsel (OCC), Commission Staff (Staff), and Omnetrix International, Inc. (Omnetrix). The parties filed the joint motion to approve a proposed Transition Plan to transfer approximately 1,350 Omnetrix customers to the provider of last resort (POLR), in this case, Qwest Corporation (Qwest). Those customers would then be given written notice and an opportunity to choose a different provider. Qwest, although not a party to the motion, nonetheless supports the motion. The parties also request that response time be waived to this motion.

2. A hearing was held before the Commission on April 8, 2004 to receive testimony and evidence regarding the Transition Plan. All parties offered testimony and evidence. The parties requested that this be handled in an expedited manner in order to prevent as much disruption as possible to the affected Omnetrix customers. Accordingly, because the parties had received sufficient notice regarding the hearing set in this matter and were in attendance, and

because none of the affected parties objected, we conducted expedited deliberations immediately following the hearing.

3. Now, being duly advised in the matter, we grant the joint motion consistent with the discussion below.

4. This matter originated on February 10, 2004 when Omnetrix doing business as The Home Phone Company filed Advice Letter No. 5 along with an application to discontinue providing local exchange telecommunications services and emerging competitive telecommunications services in Colorado. According to the application, Omnetrix indicated that all of its customers are being served pursuant to a Wholesale Services Agreement with Colorado Teleserv, Inc. (CTI). On February 17, 2004, Omnetrix filed a letter requesting to withdraw the application for discontinuance, representing that it had resolved the financial problems that caused it to file to discontinue service.

5. Staff, OCC, and Qwest intervened and requested a hearing in this matter and opposed the request of Omnetrix to withdraw its application to discontinue service. In its intervention, Qwest represented that Omnetrix had failed to meet payment deadlines it had negotiated with Qwest for past due amounts, despite Qwest's extension of the deadline for disconnecting Omnetrix several times.

6. In Decision No. C04-0196, we requested additional information from Omnetrix prior to determining whether to consider its request to withdraw its application for discontinuance. Additionally, we ordered Qwest not to disconnect Omnetrix's wholesale services until further order of the Commission.

7. In response to our request for additional information, Omnetrix admitted that it owed Qwest for approximately 150 customers served on its own billing account numbers (BANs) and for approximately 1,200 customers served on CTI's BANs. Omnetrix also conceded that Qwest had issued it two separate notices of disconnection. Omnetrix also indicated that it had reached an agreement in principle to retire all past due amounts. However, Qwest subsequently filed a status report with the Commission indicating that Qwest and Omnetrix were unable to reach a settlement regarding past due amounts owed.

8. Qwest also requested that this matter be heard by the full Commission or a Hearing Commissioner in order to expedite an order approving a transition plan.

9. In the joint motion and at hearing, the parties indicate that approximately 1,200 Omnetrix customers are currently being served on CTI's BANs as part of a Wholesale Services Agreement between CTI and Omnetrix. Testimony also reveals that Omnetrix customers have become confused by a disconnection notice sent by DHS West, LLC (DHS) as a secured creditor of Omnetrix. Mr. Tim Wetherald is identified as manager of DHS. Due to extreme confusion by Omnetrix's customers, the parties request that an expedited transition be implemented to transfer customers at risk of loss of telephone service to a default provider.

10. The parties presented their Transition Plan at the hearing, describing it as a "Snap-Back" plan. The parties propose that Qwest, the POLR in this matter, be designated as the default provider for all Omnetrix customers, including those served on Omnetrix's and CTI's BANs. This will ensure that no customer will lose telephone service. The parties then propose that these customers be provided notice of the transfer and of the right to choose an alternate provider from a list provided by OCC and Staff. Affected customers will not be charged for the

transfer to the default provider. The parties made several changes to the notice form and the Transition Plan at hearing, adding language to both documents clarifying the contents of both.

11. In the joint motion, the parties request that we waive the requirement to use Form A customer notice as required by 4 *Code of Colorado Regulations* (CCR) 723-25-7.7, since they plan to use an alternate notice to accommodate the timing and approach of the unique transition plan proposed here.

12. The parties further request we waive Rule 4 CCR 723-2-7.6(d) to attach the most recent jurisdiction list of local exchange providers maintained by the Commission. Instead, the parties propose to substitute a list of alternative providers prepared by Staff and the OCC, as Attachment C to the Transition Plan. The parties also request waiver of the Commission's slamming rules at 4 CCR 723-2-25, including the requirement to obtain a letter of agency from the customer authorizing a change of providers.

13. The parties request waiver of 4 CCR 723-2-27.4.1, which requires customers who commence service to be informed by the local exchange carrier of their interLATA and intraLATA toll carrier options. Customers who have Omnetrix long distance will be advised by the notice that they have been defaulted to Qwest's long distance service, if available, but they may choose another carrier at any time.

14. The parties request waiver of any claim of "cramming" or unauthorized charges on a customer's bill that may appear inadvertently when a customer's enhanced service or package is transferred. The parties represent that this waiver is required since the default provider's and Omnetrix's bundled service offerings may not be exactly the same.

15. Further, the parties request that Omnetrix be required to provide a list of its customers serviced on its own BANs and CTI's BANs to Qwest as default provider, and to file the list confidentially with the Commission within two business days of Commission approval of the transition plan. Should Omnetrix fail to provide the list as ordered, Qwest is to notify the Commission and the parties as soon as practicable. Qwest wholesale operations is then ordered to provide the necessary customer information to Qwest retail operations to meet its obligations as default provider.

**B. Analysis**

16. We find the proposed Transition Plan and notice form as amended by the parties at the hearing to be in the public interest. The proposed Transition Plan provides a sound method to transfer Omnetrix's customers to Qwest in as seamless and transparent a process as possible under the circumstances. As always, ensuring that customers are not deprived of telephone service is of paramount importance when a telecommunications provider ceases operations. We believe the plan proposed by the parties here serves that purpose. The Snap-Back plan as proposed is a creative approach to ensure that customers are not deprived of phone service needlessly. We applaud the efforts of the parties here to develop such a plan in such a short period of time. We also recognize Omnetrix for its cooperation in ensuring a smooth transition for its customers to the default provider.

17. We agree with the parties that certain Commission rules should be waived in this matter to help facilitate a smooth transition of customers. We therefore find that it is prudent to waive our "slamming" and "cramming" rules as they may apply to Qwest and Qwest Long Distance in this transition of Omnetrix customers. We find it in the public interest to designate

Qwest, pursuant to 4 CCR 723-25-7.6(g), as the default provider for all Omnetrix customers, including those served on Omnetrix's and CTI's BANs.

18. We also waive the requirement under 4 CCR 723-25-7.7 to use Form A to notify Omnetrix customers of the transition plan. In addition, we find it prudent to waive the requirement under 4 CCR 723-25-7.6(d) to attach the most recent jurisdictional list of local exchange providers maintained by the Commission, and instead substitute the list of providers compiled by Staff and OCC.

19. We also waive our Rule 4 CCR 723-2-27.4.1 requiring customers who commence service to be informed by the local exchange carrier of their interLATA and intraLATA toll carrier options. As the parties requested, the Omnetrix customers who have Omnetrix long distance will be advised by the notice in the transition plan that they have been defaulted to Qwest's long distance service, if available, but may choose another carrier at any time.

20. The parties also request that we order Omnetrix to provide a list of its customers served on its own BANs and CTI's BANs to Qwest and the Commission within two business days of Commission approval of the transition plan. We note that Omnetrix provided the Commission and the parties with a CD that it represented contains such a customer service list. To the extent that list is deficient in any manner, we order Omnetrix to supplement the list it provided at hearing. In addition, we order that Qwest's wholesale operations are authorized to communicate with its retail operations concerning the affected customers in order to meet Qwest's obligations under the Transition Plan.

21. We order Qwest to issue the notice as modified at hearing to Omnetrix's customers immediately upon transfer of those customers to its service. We also find that no

specific order regarding PIC charges is needed, and Qwest need not segregate affected customers for different treatment. Finally, we adopt the transition plan and notice form as proposed in the Joint Motion and as modified by the parties at hearing, and order that the plan be implemented immediately upon the effective date of this Order. The approved transition plan and notice are appended to this Order.

22. We note that this docket and hearing was intended solely to expedite a transition plan for those affected Omnetrix customers. However, during the course of this matter and hearing, it became evident that serious issues still exist regarding possible violations of Commission rules. We therefore reserve the possibility of raising these issues on our own motion via a show cause proceeding or an investigatory docket. We also acknowledge that any other party may raise these issues at a future date as well.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Transition Plan and Notice proposed by Commission Staff, the Colorado Office of Consumer Counsel, and Omnetrix International, Inc., and supported by Qwest Corporation, and modified at hearing is approved consistent with the discussion above. The approved transition plan and notice are appended to this Order.

2. Commission rules addressing the transition process and slamming and cramming prohibitions as specifically identified above are waived.

3. We authorize Qwest Corporation wholesale operations to communicate with its retail operations to the extent necessary to meet Qwest Corporation's obligations under this Transition Plan.

4. The approved Transition Plan and Notice (*see* Attachments A and B) are to be implemented immediately.

5. Response time to the Joint Motion is waived.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
April 8, 2004.**

(SEAL)



ATTEST: A TRUE COPY

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

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POLLY PAGE

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JIM DYER

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Commissioners

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

**DOCKET NO. 04A-058AT**

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**IN THE MATTER OF THE APPLICATION OF OMNETRIX INTERNATIONAL, INC.  
TO DISCONTINUE OR CURTAIL JURISDICTIONAL TELECOMMUNICATIONS  
SERVICE.**

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**TRANSITION PLAN**

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The following Transition Plan (the "Plan") provides that the customers currently served by Omnetrix International, Inc. d/b/a the Home Phone Company ("Omnetrix" or "OMXI"), as well as any other Omnetrix customers served on the billing account numbers ("BANs") of Colorado Teleserv, Inc. ("CTI"), will be transferred to and served by the provider of last resort, Qwest Corporation ("Qwest"), as the default provider designated by the Commission in accordance with Rule 723-25-7.6 (g), along with written notice that they may choose another local and long distance service provider at any time.

**I. INTRODUCTION**

1. On February 10, 2004 Omnetrix filed the above-captioned application seeking to discontinue providing Local Exchange Telecommunications Services and Emerging Competitive Telecommunications Services in Colorado.<sup>1</sup>

2. The following Plan has been developed to provide the operational steps and procedural safeguards necessary for the Colorado Public Utilities Commission ("Commission") to approve Omnetrix's Application to discontinue the provision of telephone service to its Colorado customers while ensuring that all these customers maintain continuity of basic phone

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<sup>1</sup> Omnetrix's Application in In re the Application of Omnetrix International, Inc to Discontinue or Curtail Jurisdictional Telecommunications Service, 04A-058AT.

Exh. No. 13

Appl. No. \_\_\_\_\_

Witness \_\_\_\_\_

Date 4/8/04 *[Signature]*

service, and at the same time, considering Qwest's financial and operational interests in a timely transition.

## **II. THE TRANSITION PLAN FOR OMNETRIX CUSTOMERS**

1. In accordance with Commission Rule 4 CCR 723-25-7.6(g), and because Qwest has been designated as the provider of last resort for the area served by Omnetrix under Commission Rule 4 CCR 723-42, the Commission will designate Qwest as the default provider of local exchange service and long-distance service for OMXI local and long-distance customers, including those being served under CTI's BANs.

2. The transition period for Omnetrix's customers will begin the day after the effective date of the Commission's Order approving the transition plan and end no later than 30 days after the last customer notice has been mailed by the default provider. The customer notice ("Notice Letter" attached as Attachment B) shall be mailed when OMXI's customers have been transferred to the default provider. During this transition period, OMXI customers will be informed of the company's exit from the market and the right to choose another local or long-distance provider, after having been transferred to the default provider to ensure continuity of service.

3. No more than two business days after the effective date of the Commission order approving the Application to discontinue service, Omnetrix must provide Qwest and the Commission with a complete and accurate customer list, including those OMXI customers served under CTI's BANs. The list shall include each customer's name, telephone number, billing address, presubscribed interexchange carrier (PIC), and LPIC, optional features, and any other relevant information contained in the customer service record. Further, within four

business days following the effective date of the Order approving the Application, the default provider will begin transitioning OMXI's customers to its service and shall complete this transition process within the transition period. In addition, the default provider shall send the attached Notice Letter via First Class Mail within two business days of the completed transition of each customer. This Notice Letter contains the information required by 4 CCR 723-25-7.6, but has been modified as described below. In addition, the default provider will mail by separate First Class Mail a notice to the board of county commissioners of affected county, and to the mayor of each affected city, town, or municipality.

4. The Notice Letter, included as Attachment B, is a modification of the Form A customer notice required by Commission Rule 4 CCR 723-25-7.7 and the list of alternative providers is a modification of the latest Commission jurisdictional list (see Rule 4 CCR 723-25-7.6(d)) to reflect current circumstances. The Notice Letter will be sent after Commission approval of the Application and immediately after transferring customers to the default provider, thus requiring the modifications. Also, the Commission's jurisdictional list of providers will be modified to include only those local exchange providers ready, willing and able to provide local service to OMXI's customers.

5. During the transition period, and upon request of a CLEC who is listed on the Commission's Jurisdictional List of Telecommunications Providers, the default provider or the Commission shall make available the published subscriber list information, including name, address, and telephone number to permit other CLECs to solicit those customers who are not on the Colorado or national do-not-call lists.

6. The default provider shall be authorized to receive from Qwest wholesale and Qwest wholesale shall be authorized to provide to the default provider, the necessary information

it has available for the default provider to satisfy its obligations as defined in the Plan. Omnetrix and Qwest wholesale operations shall make the published Omnetrix subscriber list information available to CLECs upon request (as described in ¶ 5 above).

7. The default provider will migrate OMXI customers to the default provider's local service, without interruption of service and with their current telephone number and features and enhanced services, as feasible, and at the current default provider's rates. With the exception of those customers whose presubscribed long-distance carrier is Omnetrix, customers will retain their existing interLATA and intraLATA carriers and these presubscribed carriers will remain unchanged unless and until the customer requests a change. If a customer is presubscribed to OMXI long-distance service at the time the customer is transitioned to the default provider, that customer will be assigned to a similar long-distance plan provided by Qwest Long Distance. *on 4/6*  
*PMC*

There will be no charge imposed by the default provider or Omnetrix to customers for changing telecommunications service to another carrier as a result of the discontinuance of service.

8. Based on Omnetrix's estimate that it has about 1350 customers, Qwest believes it will be able to complete the migration of OMXI customers to Qwest within the transition period. If Qwest experiences unforeseen difficulties in completing the migration process by the end of the transition period, Qwest will notify Omnetrix and the Commission.

9. OMXI customers with a prior unpaid indebtedness to the default provider for basic local exchange telephone service and who fail to pay the prior indebtedness or reach payment arrangements acceptable to the default provider will nonetheless be migrated to the default provider after which time the default provider may pursue collection and service disconnection action in accordance with the Commission's rules.

10. The Commission will waive its rules prohibiting slamming (4 CCR 723-2-25), including a waiver of the letter of agency (“LOA”) requirements. In addition, the Commission will waive Rule 4 CCR 723-2-27.4.1 relating to customer notification to select a long-distance provider at service initiation. These temporary waivers for the duration of the transition plan are necessary to transfer OMXI customers to the default provider and without service interruption within the time allotted in the Plan. In addition, the Commission will waive any claim of cramming (unauthorized charges being placed on a customer’s bill) that may arise inadvertently by virtue of transferring customers’ existing enhanced services, including packages of services, as reflected in the customer service record (e.g., call waiting, call forwarding, etc.).

11. Not later than 15 business days after OMXI customers are migrated to the default provider, the default provider will send a letter to those customers confirming that the default provider is now their service provider, and confirming the customer’s service, products, features, including long-distance as applicable, and their associated rates. The default provider’s notice to converted customers shall be prepared in cooperation with the Commission Staff and the OCC.

12. Upon completion of the transition period, Omnetrix will cease providing local exchange and long-distance service in Colorado.

13. If Omnetrix holds deposits for service from customers, it will refund the deposit and provide an affidavit to the Commission confirming the return of the deposits by the date determined by the Commission. The affidavit will include each customer’s name, address, telephone number and the amount of the deposit returned and the date it was returned.

14. If any customer has prepaid Omnetrix for service, and Omnetrix has not provided the customer with such service, Omnetrix shall immediately refund the customer its advance for service. Omnetrix will provide an affidavit to the Commission confirming the refund of any

advances to customers within 30 days following the end of the transition period. The affidavit will include each such customer's name, address, telephone number, the amount of the refund, and the date the refund was mailed.

15. Omnetrix shall not bill any customers for services provided, or to be provided 30 days after a customer has been transitioned to the default provider.

16. Omnetrix's CPCN and Letter of Registration shall no longer be effective and its tariffs shall be deemed cancelled simultaneously on the day service for all of its customers have been transferred to the default provider. Because Omnetrix is discontinuing service, it is apparent that it will no longer be ready, willing, and able to offer service in accordance with its granted authorities and filed tariff. Therefore, it is consistent with its application that the filed tariff is deemed cancelled as of the day service is discontinued.

17. If at any time, Omnetrix is again ready, willing, and able to offer service, it will be free to file a new application for a CPCN and/or Letter of Registration and a new tariff with the Commission. No further filings will be required to effectuate the cancellation of Omnetrix's previously granted authorities or of its tariffs on file with the Commission, and the Commission's records will be updated to reflect the discontinuance of service and cancellation of its tariff.

18. In the event that Omnetrix cannot comply with any aspect of the Transition Plan, it shall inform the Commission and the parties as soon as possible.

19. OMXI shall cooperate fully with Commission Staff, the OCC, and the default provider in implementing this Transition Plan.

Exh. No. 15  
Appl. No. \_\_\_\_\_  
Witness \_\_\_\_\_

Attachment B

OMNETRIX (DBA THE HOME PHONE COMPANY) HAS STOPPED PROVIDING LOCAL AND LONG-DISTANCE TELEPHONE SERVICE IN COLORADO 4/8/04

Dear Customer,

Omnetrix (The Home Phone Company) received approval from the Colorado Public Utilities Commission (PUC) to stop providing you with local telephone service effective on or about XXXX XX, 2004. Due to financial difficulties, Omnetrix has ceased operating as a telephone company in Colorado. If you recently got a letter with a DISCONNECT NOTICE from the Home Phone Company and Digital Home Services, LLC, the PUC has directed Qwest to tell you that ~~this notice~~ <sup>the DISCONNECT NOTICE</sup> was unauthorized and that failure to pay will ~~not~~ <sup>NOT</sup> result in your phone service being disconnected. Please call the PUC at 303-894-2070 (or toll free in Colorado only at 1-800-456-0858) if you have any questions about ~~this letter~~ <sup>the DISCONNECT NOTICE</sup>.

To maintain continuity of your telephone service, the PUC ordered Qwest as the default provider to transfer you from Omnetrix to Qwest local and long-distance service (if Omnetrix provided your long-distance). Although you are now a Qwest customer, you may at any time choose another provider. For your convenience, the PUC and the Office of Consumer Counsel have prepared the attached list of alternative providers from whom you may choose.

As ordered by the <sup>PUC</sup> ~~Commission~~, you have been transferred to Qwest service with the same telephone number and, to the extent possible, the same services and features that you have now, except they will be provided under Qwest's terms and conditions and Qwest's rates. If you were also an Omnetrix long-distance customer, you have been transferred to a similar Qwest long-distance plan. Again, you are free to choose another long-distance provider other than Qwest.

Depending on your credit history, Qwest may charge you a deposit. **Please note:** if you owe Qwest a previous bill for local telephone service, you must either pay Qwest what is owed, make acceptable payment arrangements, or choose another provider to ensure your service is continued without disruption.

You may call Qwest at 800-244-1111 to discuss a previous residential bill, choose another long-distance carrier, or for any other questions you might have. For a previous

If you are currently a customer of a long distance provider company other than Omnetrix, your long distance provider will remain unchanged unless and until you request a change.

**business bill, or to choose another business long-distance carrier, or for any other business service questions you might have, you may call Qwest at 800-603-6000.**

Please be assured that your transfer to Qwest service, as ordered by the Commission, in no way prevents you from choosing a different local or long-distance provider at any time.

By: \_\_\_\_\_

**OMNETRIX (DBA THE HOME PHONE COMPANY) HAS STOPPED  
PROVIDING LOCAL AND LONG-DISTANCE TELEPHONE SERVICE IN  
COLORADO**

Dear Customer,

Omnetrix (The Home Phone Company) received approval from the Colorado Public Utilities Commission (PUC) to stop providing you with local telephone service. Due to financial difficulties, Omnetrix has ceased operating as a telephone company in Colorado, and Qwest is now your service provider. If you recently got a letter with a DISCONNECT NOTICE from the Home Phone Company and Digital Home Services, LLC, the PUC has directed Qwest to tell you that the DISCONNECT NOTICE was unauthorized and that failure to pay will NOT result in your phone service being disconnected. Please call the PUC at 303-894-2070 (or toll free in Colorado only at 1-800-456-0858) if you have any questions about the DISCONNECT NOTICE or complaints about Omnetrix residential service.

To maintain continuity of your telephone service, the PUC ordered Qwest as the default provider to transfer you from Omnetrix to Qwest local and long-distance service (if Omnetrix provided your long-distance). If you are currently a customer of a long distance company other than Omnetrix, your long distance provider will remain unchanged unless and until you request a change. Although you are now a Qwest customer, you may at any time choose another provider. For your convenience, the PUC and the Office of Consumer Counsel have prepared the attached list of alternative providers from whom you may choose. If you had arranged with Omnetrix for a preferred carrier freeze with regard to your local and/or long distance services, those freezes have been lifted in the transfer process. Please contact Qwest at the number below if you would like to institute a new freeze on any of your new service providers.

As ordered by the PUC, you have been transferred to Qwest service with the same telephone number and, to the extent possible, the same services and features that you have now, except they will be provided under Qwest's terms and conditions and Qwest's rates. If you were also an Omnetrix long-distance customer, you have been transferred to

a similar Qwest long-distance plan. Again, you are free to choose another long-distance provider other than Qwest.

Depending on your credit history, Qwest may charge you a deposit. **Please note:** if you owe Qwest a previous bill for local telephone service, you must either pay Qwest what is owed, make acceptable payment arrangements, or choose another provider to ensure your service is continued without disruption.

**You may call Qwest at 800-244-1111 to discuss a previous residential bill, choose another long-distance carrier, or for any other questions you might have including questions about Qwest's rates, terms and conditions for service. For a previous business bill, or to choose another business long-distance carrier, or for any other business service questions you might have, you may call Qwest at 800-603-6000.**

Please be assured that your transfer to Qwest service, as ordered by the Commission, in no way prevents you from choosing a different local or long-distance provider at any time.

By: \_\_\_\_\_

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **PETITION FOR WAIVER** to be 1) filed with the FCC via its Electronic Comment Filing System in CC Docket Nos. 94-129 and 00-257, 2) served via email on the FCC's duplicating contractor Qualex International, Inc. at [qualexint@aol.com](mailto:qualexint@aol.com), and 3) served (as indicated) via either hand delivery or First Class United States Mail, postage prepaid, on the parties listed on the attached service list.

/s/ Ross Dino

Ross Dino

April 21, 2004

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