

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
BellSouth Telecommunications, Inc. Request)
for Declaratory Ruling that State) WC Docket No. 03-251
Commissions May Not Regulate Broadband)
Internet Access Services by Requiring)
BellSouth to Provide Wholesale or Retail)
Broadband Services to Competitive LEC UNE)
Voice Customers)

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc. (“Qwest”) respectfully submits these Comments to the Notice of Inquiry in the above-captioned proceeding.¹ In its *Notice*, the Federal Communications Commission (“Commission”) seeks comment on the tying or bundling of services. Because both consumers and competition benefit from the offering of bundles, and the risk of any potential harm is eliminated by existing safeguards, the Commission should refrain from establishing any rules of general applicability, and instead address any specific concerns as they arise.

¹ *In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, *Memorandum Opinion and Order and Notice of Inquiry*, 20 FCC Rcd 6830 ¶ 37 (2005) (“*Notice*”); *see also* summary published in the Federal Register, 70 Fed. Reg. 19466 (Apr. 13, 2005).

I. THE COMMISSION SHOULD TAKE NO ACTION WITH RESPECT TO THE BUNDLING OF VARIOUS SERVICES, AND INSTEAD LET THE MARKETPLACE AND EXISTING SAFEGUARDS ADDRESS ANY CONCERNS THAT SUCH BUNDLING POSES.

The Commission should not impose any further rules of general applicability to the bundling of services. The bundling of services is beneficial to consumers, and any potential risks of harm can be resolved by the marketplace and existing safeguards.

A. The Offering of Integrated Service Packages Benefits Both Consumers and Competition.

Consumers expect and demand “one-stop” shopping and the benefits of obtaining multiple products from a single provider with a single bill. And providers have responded by offering such bundles. For example, wireless providers package their local and long distance offerings with other data applications.² Cable providers are offering bundles that include video programming, high-speed Internet access, cable telephony, and video-on-demand.³ Traditional phone companies like Qwest are offering services packages that include local, long distance, Internet access, video programming, and wireless services with greater discounts for larger bundles.⁴

There can be no doubt that consumer demand for these bundles has driven their availability.⁵ Moreover, the Commission has previously found that bundling furthers the public

² *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20609 ¶ 22 (2004).

³ *See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, *Tenth Annual Report*, 19 FCC Rcd 1606, 1612-13 ¶¶ 12-14 (2004).

⁴ *See* <http://pcat.qwest.com/pcat/bundlesCustomize.do?customize=res>.

⁵ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, CC

interest by facilitating competition, reducing prices, reducing transaction costs, and encouraging service innovation.⁶ Accordingly, the benefits of bundling are well-documented both by the actions in the marketplace and the Commission’s previous conclusions.

B. Any Concerns Over the Anti-Competitive Effects of Bundling Are Over-Stated, Already Addressed By the Marketplace Itself or Existing Safeguards, or Otherwise Outweighed by the Benefits of Bundling.

No credible argument can be made that the bundling that consumers demand and expect is harmful to them or to competition. First, competition has provided consumers with multiple choices for the various services that comprise these bundles, and there is nothing to suggest consumers are being forced to purchase redundant or unwanted services. Moreover, as the Commission has previously found, “*competition* is the most effective means of ensuring that the charges, practices, classifications, and regulations with respect to . . . [a particular service] are just and reasonable, and not unjustly or unreasonably discriminatory.”⁷

Second, beyond competitive pressures, existing safeguards prevent providers from forcing unwanted services on consumers. Consumers would, of course, be harmed if a provider of one service coerced a consumer to accept a second service as a condition to obtaining the first service. As a practical matter, this could only arise where the provider had sufficient economic power in the market for the first service. But existing safeguards are sufficient to address such a

Docket Nos. 96-61, 98-183, *Report and Order*, 16 FCC Rcd 7418, 7425 ¶ 11 (2001) (“*CPE Bundling Order*”) (recognizing consumer demand for bundled packages).

⁶ *CPE Bundling Order*, 16 FCC Rcd at 7424-25 ¶¶ 9-10; see also *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-149, *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061, 8110-11 ¶ 64 (1998) (finding it “desirable for carriers to provide integrated telecommunications service packages” (footnote omitted)).

⁷ *In the Matter of Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket Nos. 97-172, 92-105, *Memorandum Opinion and Order*, 14 FCC Rcd 16252, 16270 ¶ 31 (1999) (emphasis added).

tying arrangement. Specifically, a tying arrangement could obviously rise to the level of being a Sherman Act violation.⁸ Moreover, common carriers that have market power are obligated to tariff those services and offer them separately.⁹ And such conduct would undoubtedly be viewed as an unjust and unreasonable practice that the Commission could address upon its own initiative or through a Section 208 complaint.

Third, in addition to preventing harm to consumers, existing safeguards prevent harm to competition. Some party will likely argue that the offering of bundles allows the Bell Operating Companies (“BOCs”) to cross-subsidize non-regulated products. But with price-cap and accounting regulation, there is no possibility of cross-subsidization.¹⁰

Finally, even if a credible risk of harm could be shown, the benefits of bundling clearly outweigh the risk of harm. Indeed, even where a carrier may have some residual market power (*e.g.*, in an incumbent LEC’s local exchange), the Commission has found that “the consumer benefits of bundling outweigh the risk that incumbents LECs can use this power [in the local exchange market] to harm competition.”¹¹

Qwest offers the vast majority (if not all) components of its services to consumers on a disaggregated basis. If a consumer desires a single component of a service bundle, the market compels Qwest to offer it. Otherwise, the consumer will go elsewhere. The only legitimate concern that could conceivably arise from Qwest’s bundled offerings would be if Qwest were to condition its offering of local exchange service on the consumer’s purchase of another service, such as video programming. But Qwest obviously cannot and will not condition the offering of a tariffed service

⁸ See *Eastman Kodak Co. v. Image Technical Services*, 504 U.S. 451, 461-62, 112 S. Ct. 2072, 2079 (1992); see also *CPE Bundling Order*, 16 FCC Rcd at 7428 ¶ 18.

⁹ See *CPE Bundling Order*, 16 FCC Rcd at 7444 ¶ 44 (noting that all incumbent local exchange carriers (“LECs”) are required to offer basic local exchange service on an unbundled, tariffed, non-discriminatory basis); see also 47 U.S.C. § 201(a) (requiring common carriers to furnish service upon reasonable request therefor).

¹⁰ See *CPE Bundling Order*, 16 FCC Rcd at 7438-41 ¶¶ 33-38, 7444-45 ¶ 45.

¹¹ *Id.* at 7436 ¶ 30.

on the purchase of an unrelated service. To do so, would violate the law and Qwest's tariffs, and be quickly remedied by any number of regulatory bodies.

As long as a carrier does not require consumers to purchase multiple services in order to obtain a service for which the carrier has market power, no harm can result from the offering of bundles. Indeed, the Commission found that the separate availability of components of a bundle, either through existing regulatory requirements or through the functioning of a competitive market was essential to ensuring the improper extension of market power.¹²

II. CONCLUSION.

The Commission need not impose rules of general applicability here, but should instead allow the competitive forces of the marketplace to control the offering of bundled services, and only address specific problems as they arise. Because additional regulatory burdens are unnecessary to protect consumers or competition from any potential harm from bundled offerings, the Commission should be mindful of the deregulatory underpinnings of the Act, and avoid imposing such additional burdens here.

Respectfully submitted,

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¹² *Id.* at 7428 ¶ 18.

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served via email on Janice M. Myles, Competition Policy Division, Wireline Competition Bureau (at janice.myles@fcc.gov), and 3) served via email on the FCC's duplicating contractor Best Copy and Printing, Inc. (at fcc@bcpiweb.com).

/s/ Ross Dino

Ross Dino

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