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EX PARTE

Filed electronically via ECFS

April 26, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992,* MB Docket No. 05-311

Dear Ms. Dortch:

On April 26, 2006, Melissa Newman, Lynn Starr, Craig Brown, Mary LaFave, all of Qwest, and James Campbell, representing Qwest, met with Renee Crittendon, Bill Dever, Bill Kehoe, and Jeremy Miller of the Policy Competition Division of the Wireline Competition Bureau to discuss cable.

The attached document was used as the basis for the discussion.

Sincerely,

/s/ Melissa E. Newman

Attachment

Copy via email to:
Renee Crittendon
Bill Dever
Bill Kehoe
Jeremy Miller

Qwest®

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In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 MB Docket No. 05-311

April 26, 2006

Overview

- Qwest's Cable Architecture and History
- Qwest's Cable Franchises
- Cable Marketplace and Facilities-Based Competition
- Build-Out Requirements
- Cable Franchise Negotiations Process
- Conclusion

Qwest's Cable Architecture and History

Began offering Video DialTone in Omaha
- Analog
- Hybrid Fiber Coaxial Cable

Began offering VDSL/FTTN
- ATM Based
- 7 franchises in Phoenix
- Temporary license in Boulder*

Began offering VDSL in Unincorporated Douglas County

Began Fiber to the Home in Lone Tree & South Jordan

1996 **1998** **2000** **2002** **2004** **2006**

Cable operations moved to a separate subsidiary (BSI)
– Part 32

Renegotiated build-out requirements in Phoenix metro franchises

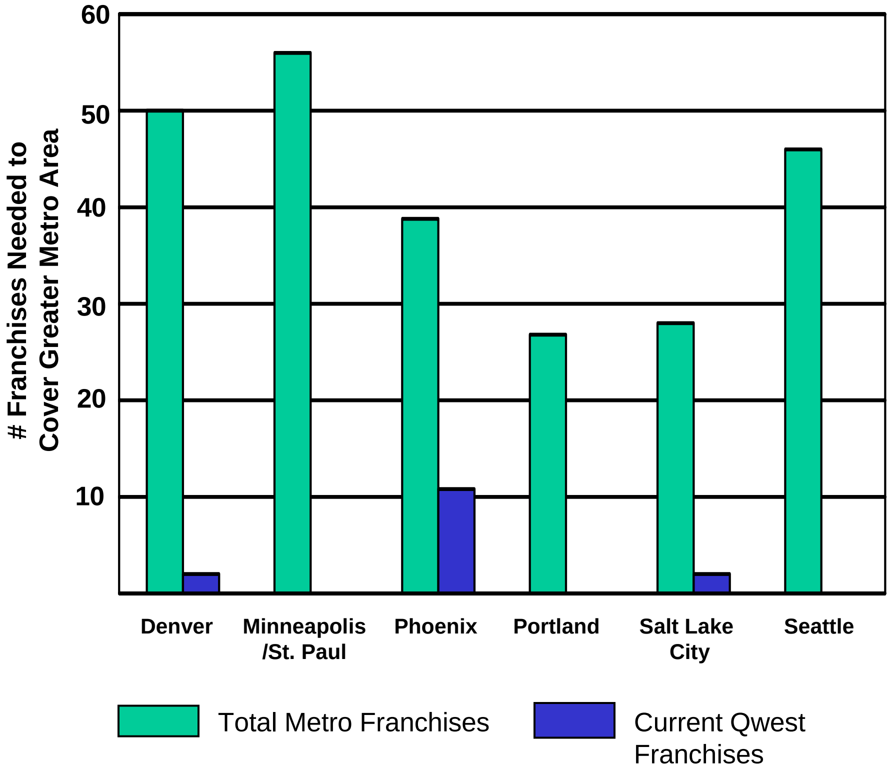
Continued evolution of network architecture

** Ultimately walked away from Boulder license in 2001*

Current Qwest Cable Franchises

Qwest currently has 18 franchises and serves 70,000+ cable subscribers

State	Franchise	Date Obtained
AZ	Scottsdale	7/10/97
	Phoenix	9/4/98
	Chandler	11/7/98
	Gilbert	1/26/99
	Unincorp. Maricopa County	4/21/99
	Glendale	7/1/99
	Peoria	12/4/99
	Paradise Valley	3/2000
	Buckeye	12/7/04
	Unincorp. Pinal County	4/27/05
	Maricopa	5/3/05
CO	Unincorp. Douglas County	1/4/00
	City of Lone Tree (Pocket)	3/15/05
UT	South Jordan	12/7/04
	Salt Lake City	2/3/06
NE	Unincorp. Douglas County	6/26/96
	Omaha	7/2/96
	Unincorp. Sarpy County	7/2/96



Qwest is actively negotiating with 13 other LFAs and 1 consortium representing 35 LFAs.

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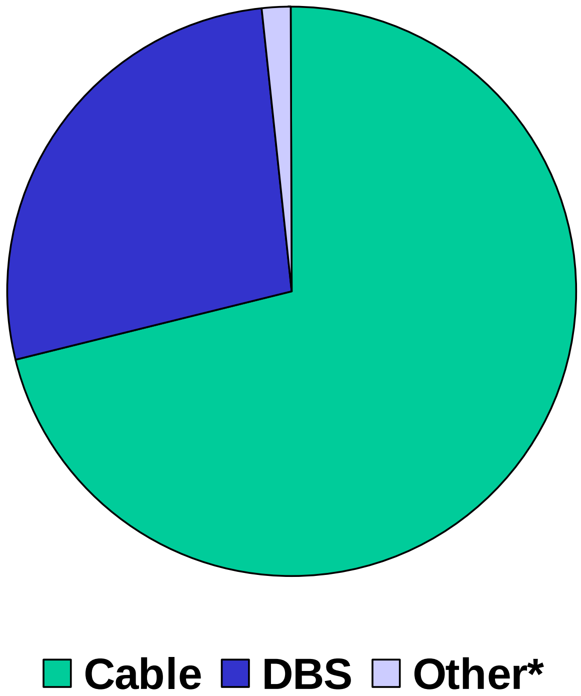
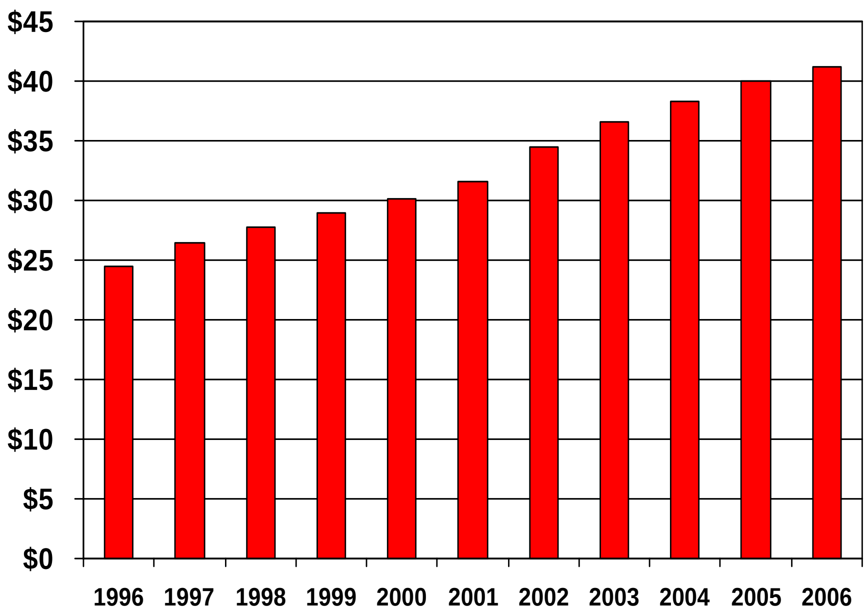
Cable Marketplace

Multichannel Video Subscribers



Expanded Basic Cable Price



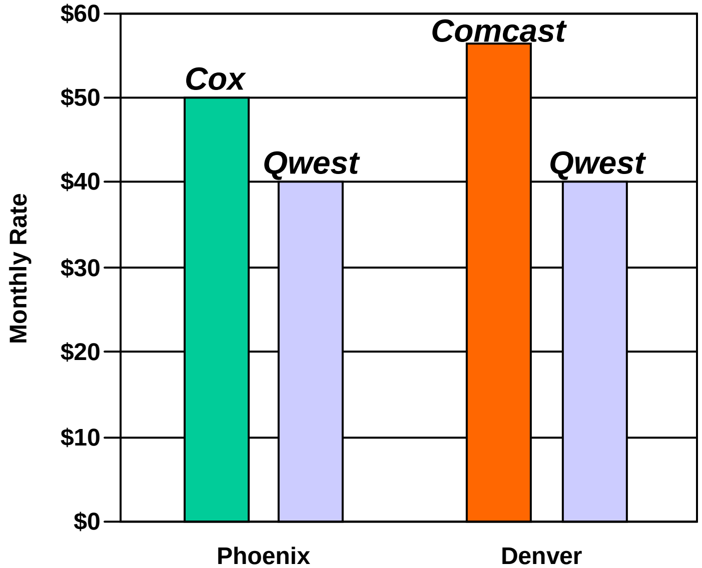
Source: NCTA (http://www.ncta.com/ContentView.aspx?contentId=65)

*** RBOC Video, C-Band, SMATV, MMDS**

Source: JP Morgan, "Cable TV/DBS: The Commoditization of Distribution," 12/22/05

Qwest Brings Consumers the Benefits of Facility Based Competition

- **According to the FCC's recent Report on Cable Industry Prices for the year ending January 1, 2004:**
  - The highest differentials were associated with wireline overbuild competition. For communities in this subgroup, the monthly cable rate and price per channel were, respectively, 15.7 percent lower and 27.2 percent lower than those averages for the noncompetitive group." *(MM Docket No. 92-266 REPORT ON CABLE INDUSTRY PRICES Rel. Feb. 4, 2005)*



•This rate applies to Qwest telephony customers only; the rate for non-telephony customers is $44.99.

- **Qwest provides competition today and brings a lower price option in its franchise areas.**

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Qwest's Experience with Build-Out Requirements

- **Initially negotiated build-out requirements**
  - Agreed to mandatory build-out requirements
    - Subscriber take-rates and capital constraints combined to create very difficult situations.
    - At considerable time and expense, renegotiated Phoenix area franchises to eliminate build-out requirements.
  - Other second entrants have had the same experience: agreed to and failed to satisfy mandatory build-out requirements, such as Wide Open West and others

- **Walked away if build-out required**
  - Qwest has walked away from negotiations with 8 different LFAs when the LFA has insisted on build-out requirements

Based on its prior experience, Qwest will NOT agree to build-out requirements in new franchises.

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Build-Out Requirements are a Barrier to Entry

- **A second entrant in ANY industry should be allowed to have market forces control deployment of services**
  - Competitors should be able to “cash flow” initial capital deployments before being REQUIRED to commit to additional deployment.
  - The market, and not regulation, should control deployment of competitive services including cable television.
  - Qwest’s build-out plans will be based on its success in the market.

- **A second entrant has no guaranteed “take rates”**
  - As the second entrant, Qwest does not have the luxury of guaranteed penetration rates, rather it must win over each new customer.
  - Nationally, with virtually no competition, incumbent cable companies are essentially assured that a minimum of 55 out of 100 homes they pass will subscribe to their service.
    - Historically, each cable franchise holder was given a monopoly within a defined territory.
    - Even when cities have multiple incumbent cable they do not compete against each other.

Build-out Requirements are a Barrier to Entry

- **Without any build-out requirements, competition in telephony is robust**
  - Competitors were permitted to select both the markets to serve and the segments of customers within those markets.
  - Competitors were not subject to mandatory build-out or universal service requirements.
    - In fact, the FCC expressly ruled that build-out requirements for CLECs were a barrier to entry. (*In the Matter of the Public Utility Commission of Texas,* 13 FCC Rcd 3460 (1997) ("*Texas PUC Order*"); *affirmed sub nom. City of Abilene v. FCC,* 164 F.3d 49 (D.C. Cir. 1999))
  - Competitors deployed their limited capital in a manner designed to win customers from incumbents and use that revenue stream to support further build-out.
  - Facility-based cable competitors like Qwest should have that same opportunity.

Cable Franchise Negotiation Process

- **The cable franchise negotiation process must be improved.**
  - Often extends over a considerable period of time.
  - Often involve the imposition of variable and unreasonable conditions e.g., upfront cash payments.
- **Based on prior experience, Qwest supports a definitive time limit for completion of franchise negotiations.**
  - Any cable television franchise application that is not acted on within four months of the date of the formal filing of the application should be “deemed granted” as a matter of federal law.
- **Qwest does not object to inclusion of core LFA needs.**
  - Qwest will provide public, education and government (PEG) access channels in parity with other cable TV providers.
  - Qwest will pay local franchise fees in parity with other cable TV providers.

Conclusion

- Customers benefit from the presence of a second wireline cable competitor.
- Mandatory build-out requirements are a barrier to Qwest's entry into the cable television market.
- Franchises should not be unreasonably delayed; negotiated time period should not exceed four months.

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