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EX PARTE

Filed electronically via ECFS

August 9, 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 August 8, 2006, Steve Davis, Lynn Starr, and Melissa Newman of Qwest met with Commissioner McDowell and Christina Pauze to discuss issues in the cable franchise proceeding.

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

Sincerely,

/s/ Melissa E. Newman

Attachment

Copy via email to:
Commissioner McDowell
Christina Pauze

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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

August 8, 2006

Overview

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

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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*

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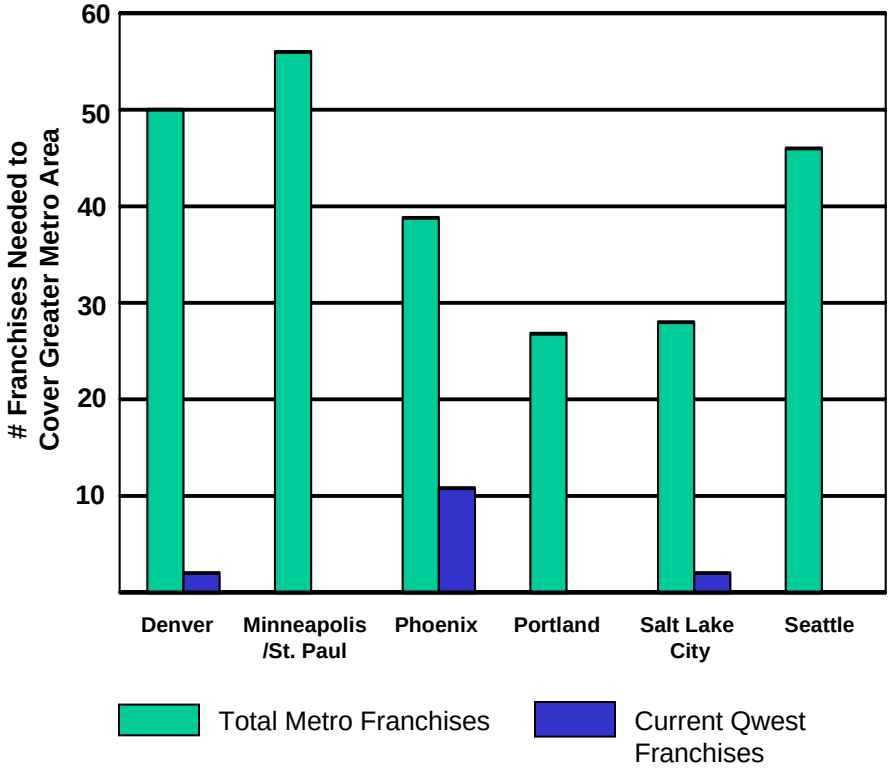
Current Qwest Cable Franchises

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 currently has 18 franchises and serves nearly 60,000 cable subscribers.

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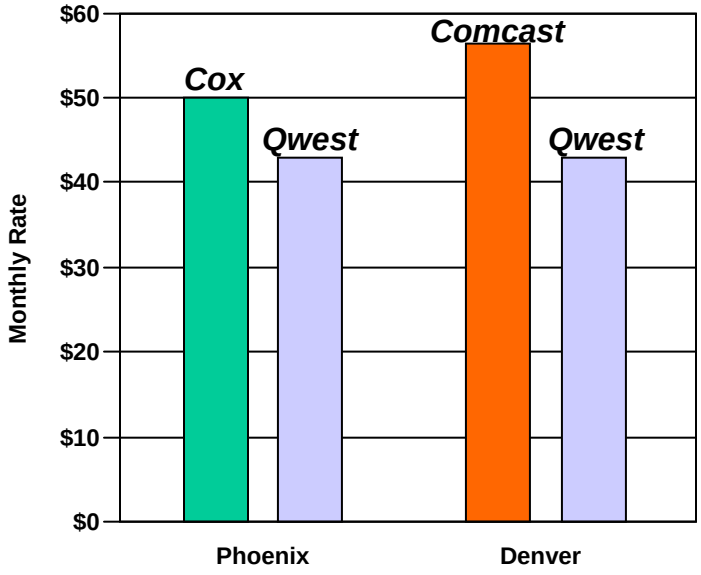
Qwest Brings Consumers the Benefits of Facility Based Competition

- **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)



- **Qwest provides competition today and brings a lower price option in its franchise areas**
  - $29.99/month for first year

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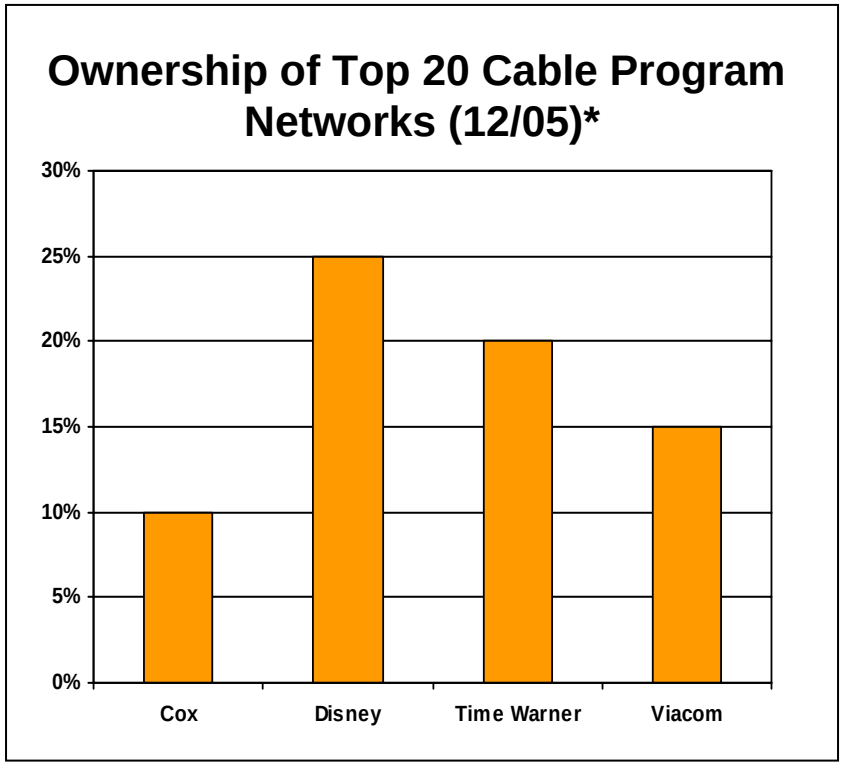
Programming



- **Qwest Choice TV**
  - All Digital
  - Expanded Basic: 102 channels
  - HDTV
  - Pay for View
  - Premium Packages
- **Family Tier Available by EOY '06**
- **Content Providers Create Barriers to à la Carte**
  - Express prohibitions on à la carte within license agreements
  - Requirement that content be received by a percentage of customers (usually 85%)
  - Tying multiple programs – to obtain an essential program must also air several others

Source: National Cable & Telecommunications Association, 2006

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The Regulatory Dichotomy

Government Regulation	Cable	Telecom
Number of required franchises	223 LFAs in 6 metro areas	6 state PUCs
Time required to obtain franchise	9-12 months	30-60 days
Obligation to serve all customers	Often mandatory build-out even for second entrants	Build-out imposed on first entrant only
Cost of essential underlying inputs	Small providers pay substantially more per subscriber for content	Wholesale services are generally priced the same for all

The impacts of the disparate regulatory treatment are profound

- *Only 2% of consumers in the United States have a wired choice **vs.** robust competition for LD, Local, wireless and VoIP.*
- *Rates for cable have continued to spiral upward annually **vs.** decreased rates for telecom services.*
- *Consumer choice is limited to packages chosen by programmers **vs.** many à la carte choices in telecom.*

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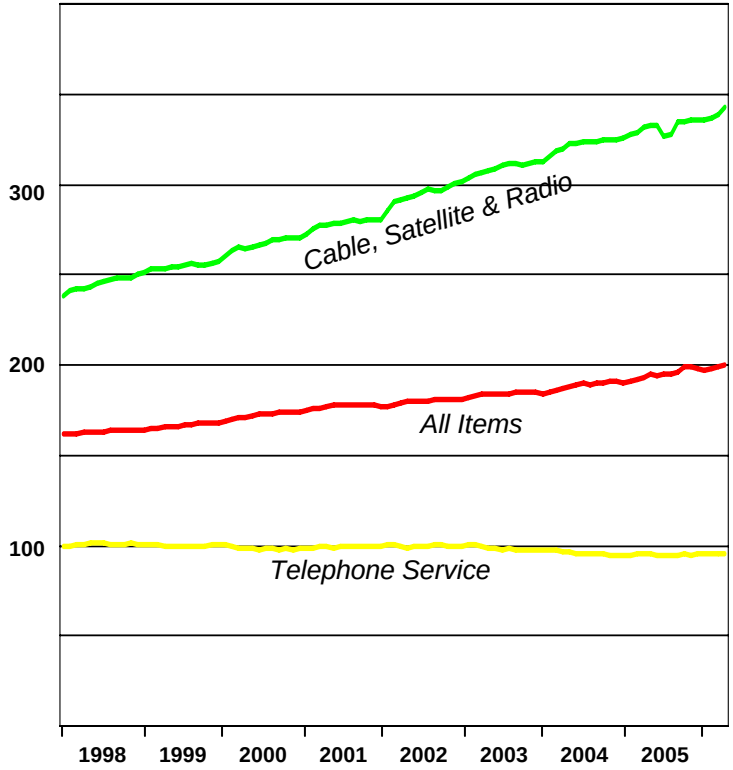
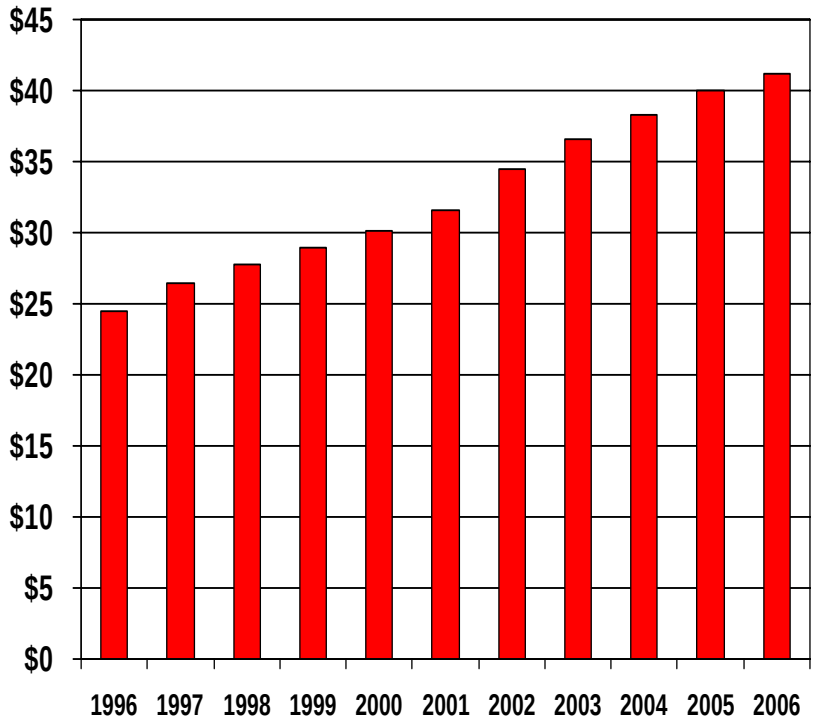
Cable Marketplace

Consumer Price Index



Source: U.S. Bureau of Labor Statistics, 2006

Expanded Basic Cable Price



Source: National Cable & Telecommunications Association, 2006 (http://www.ncta.com/ContentView.aspx?contentId=65)

The absence of competition has allowed cable operators to increase prices year after year.

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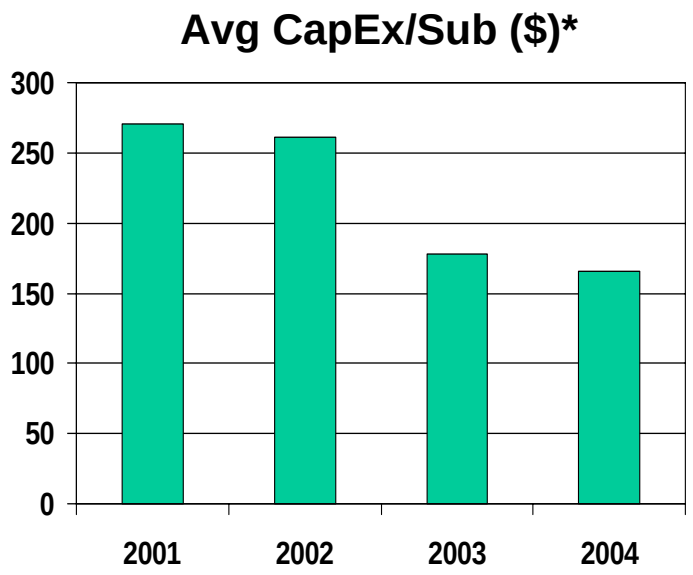
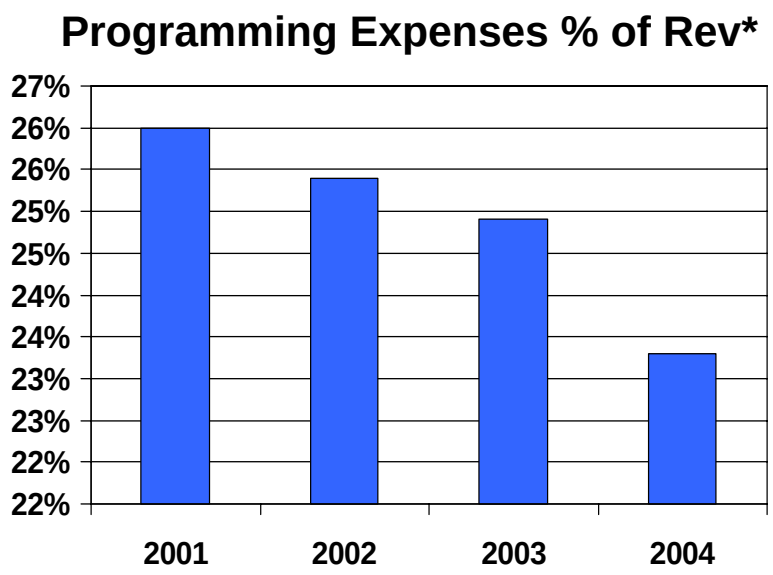
Cable Rates/Prices





The cable companies' justification for price increases simply does not ring true

- *Capital expenditures per subscriber spiked in 2000-2002 and have fallen precipitously from $16B in 2001 to $10B in 2004**
- *Programming expense as a percent of revenue has been declining on average since 2001*
- *Cable companies are recording record profits*

**Source: "Cable MSO Operating Benchmarks 2005", Kagan Research, LLC, a division of JuniperKagan, Inc.*

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Qwest's Experience with Build-Out Requirements

- **Qwest initially negotiated build-out requirements and then had to renegotiate to eliminate that requirement**
  - Other second entrants have had a similar experience: agreed to and failed to satisfy mandatory build-out requirements, such as Wide Open West
- **As noted by John Malone, cable-industry pioneer and Chairman of Liberty Media Corporation:**
  - "My experience is overbuilds have never done very well for the overbuilder," Malone said. "I know the telcos are big companies with big balance sheets, but historically they've chickened out when the full [profit and loss] impact of trying to overbuild a cable operator hits them." *(Multichannel News, May 15, 2006)*
- **Qwest has walked away if build-out required**
  - Qwest terminated negotiations with 8 different LFAs when the LFA insisted on build-out requirements

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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
- A second entrant has no guaranteed “take rates”
- Without any build-out requirements, competition in telephony is robust

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Cable Franchise Negotiation Process

- **The cable franchise negotiation process must be improved**
- **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.

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