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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation Into  
US WEST COMMUNICATIONS, INC.'s  
Compliance with Section 271 of the  
Telecommunications Act of 1996.

Docket Nos. UT-003022 and UT-003040  
**METRONET SERVICE  
CORPORATION'S REPLY TO QWEST'S  
ANSWER**

Qwest's Answer to "MetroNet's Confidential Motion to Admit Documents as Exhibits" ("Answer") misstates the law and fails to state any legitimate objection to admission of the exhibits offered by MetroNet Services Corporation ("MetroNet"), Exhibits 475-C to 486-C ("Centrex Documents"). As MetroNet explained in its Motion, the Centrex Documents are quite relevant to this proceeding and MetroNet's theory that Qwest unreasonably restricts resale and discriminates against resellers.

**A. METRONET HAS STANDING**

As the Commission has already held,<sup>1</sup> Qwest incorrectly argued that MetroNet lacks standing to raise "resale-related issues" because MetroNet is a "retail reseller" that does not "purchase at a wholesale discount [and] does not purchase under an interconnection

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<sup>1</sup> The Commission granted MetroNet's Petition to Intervene without limiting its ability to comment on issues that MetroNet perceives to be relevant. First Supplemental Order, Docket UT-003022 (April 13, 2000). Qwest's objections to the scope of MetroNet's participation are therefore untimely.

1 agreement. . . ." Answer at 3. Qwest asserts that MetroNet could only have standing if it  
2 provided "wholesale resale," which it argues "is provided for and required under the Act."  
3 Answer at 3.

4 Qwest's "standing" arguments fabricate law and misstate federal law. The  
5 Telecommunications Act ("Act") unconditionally provides that each local exchange carrier  
6 ("LEC") has a duty "not to prohibit, and not to impose unreasonable or discriminatory conditions  
7 or limitations on, the resale of its telecommunications services." 47 U.S.C. § 251(b)(1).  
8 Similarly, § 251(c)(4) states—without conditions—that ILECs have the duties:

9 (A) to offer for resale at wholesale rates any telecommunications service that the  
10 carrier provides at retail to subscribers who are not telecommunications carriers;  
and

11 (B) not to prohibit, and not to impose unreasonable or discriminatory conditions  
12 or limitations on, the resale of such telecommunications service . . . .

13 47 U.S.C. § 251(c)(4). The FCC's rules require that "[a] LEC shall make its telecommunications  
14 services available for resale to requesting *telecommunications carriers* on terms and conditions  
15 that are reasonable and non-discriminatory." 47 C.F.R. § 51.603(a) (*emphasis added*). Thus, the  
16 only limitation on Qwest's resale duties is that they apply only vis-à-vis other  
17 telecommunications carriers, as opposed to retail customers.

18 Likewise, MetroNet's status as a telecommunications carrier does not turn on  
19 whether it purchases under a retail agreement or a wholesale agreement. Nor does its status  
20 depend on whether it has requested a discount or not. Quite simply, a "telecommunications  
21 carrier" is "any provider of telecommunications services."<sup>2</sup> 47 U.S.C. § 153(44). It is  
22 undisputed on this record that MetroNet is a telecommunications carrier that obtains Centrex  
23 Plus, a telecommunications service, from Qwest and provides it to its customers through resale.  
24 *E.g.*, Exhibit 421 at pp. 3-6 (Bogus); TR 1685, line 22 to 1686, line 8.

25 \_\_\_\_\_  
26 <sup>2</sup> The definition does exclude "aggregators" such as payphone providers. This exclusion is not relevant  
to MetroNet. *Cf.* 47 U.S.C §§ 153(44) and 226.

1           Based on the Act as it is actually written, there can be no question that Qwest's  
2 duties not to restrict or discriminate against resale apply to MetroNet as it operates today.  
3 Moreover, MetroNet has an interconnection agreement with Qwest and will soon become a  
4 "wholesale" reseller as Qwest has coined the term. Transcript at 1679, line 22 to 1680, line 5.  
5 At that time MetroNet and other resellers will continue to be subject to the restrictions and  
6 discrimination that MetroNet has demonstrated on the record in this docket and will further  
7 demonstrate through the proffered exhibits. Thus, there is no legitimate question that MetroNet  
8 has a substantial interest in the issues in this proceeding.

9           The Commission should reject the artificial distinctions between "wholesale  
10 resale" and "retail resale" that Qwest has concocted to try to prevent admission of the Centrex  
11 Documents into this proceeding.

12 **B. THE CENTREX DOCUMENTS ARE RELEVANT**

13           Qwest mistakenly opines that the Centrex Documents are irrelevant because  
14 "there is nothing in the proffered documents from which one could make a determination about  
15 either the reasonableness of those current retail offerings, or any alleged discrimination."  
16 Answer at 5. First, this is a factual issue to be decided by the Commission, not by Qwest.  
17 Second, the Centrex Documents are highly relevant because they help to identify and describe  
18 Qwest's long-standing scheme to impair resale, one of the 14 checklist items of Section 271.<sup>3</sup>  
19 47 U.S.C. § 271(c)(2)(B)(xiv). As MetroNet discussed in its Motion to Admit, the Centrex  
20 Documents demonstrate that the sole justification for Qwest's and other restrictions for Centrex  
21 services was to hinder resale. *See e.g.*, Exhibit 479-C. MetroNet witness Kenneth Wilson  
22 explained in his testimony that there is no cost-based justification for these restrictions.  
23 Exhibit 383 at p. 5 (Wilson). Qwest has effectively conceded this fact, because it has never  
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25 <sup>3</sup> As MetroNet pointed out in its Motion, the threshold for admissibility is very low. "Anything is  
26 relevant which "reasonably tends to establish the theory of the party offering it, or to explain, qualify, or  
disprove the testimony of his adversary." *Rothman v. N. Am. Life & Ca. Co.*, 7 Wn. App 453, 456,  
500 P.2d 1288, 1290 (1972).

METRONET SERVICE CORPORATION'S REPLY TO QWEST'S  
ANSWER - 3

1 provided a legitimate, non-discriminatory reason for these restrictions in its witnesses' testimony  
2 or in the Answer.

3 Qwest also misrepresents MetroNet's position by arguing that "[w]hether Qwest  
4 intentionally imposed unreasonable restrictions on resale is wholly irrelevant to the issue of  
5 whether, as a matter of law, resale terms and conditions amount to unreasonable or  
6 discriminatory limitations on resale under the Act." Answer at 5. In reality, MetroNet offers the  
7 Centrex Documents to illustrate that the reason Qwest adopted the per location pricing scheme  
8 was to restrict resale. If the documents show that Qwest's per location pricing scheme had the  
9 stated goal of restricting resale and lacked any legitimate and lawful goal, then that fact  
10 "reasonably tends to establish" that Qwest's tariff/price list structure constitutes "unreasonable"  
11 discrimination against resale. This is, of course, one of the ultimate issues on Checklist Item 14.

12 Qwest also argues that MetroNet wants to admit the Centrex Documents because  
13 it "is simply seeking another forum to litigate its antitrust claims," which are pending before  
14 federal court. Answer at 6. Should the federal court find a violation of the antitrust laws, that  
15 will be quite relevant to the Public Interest inquiry that will occur later in this docket. In the  
16 meantime, MetroNet must pursue its related claims in both forums because while a single set of  
17 unlawful actions by Qwest justify different types of relief, neither forum can provide both types  
18 of relief. The antitrust court has no jurisdiction to determine whether Qwest is entitled to obtain  
19 Section 271 relief. Likewise, this Commission has no jurisdiction to award MetroNet treble  
20 damages for Qwest's violation of the antitrust laws. That the issues are related is no reason to  
21 turn a blind eye in this docket to Qwest's failure to meet the requirements of Checklist Item 14.

22 **C. THE DOCUMENTS ARE NOT TOO OLD TO BE RELEVANT**

23 Qwest misleadingly argues that the Centrex Documents are "too old to be  
24 considered in this case," because only Qwest's current behavior is relevant. Answer at 6. In fact,  
25 MetroNet offers the Centrex Documents to explain the goals and effects of Qwest's current  
26 behavior. The Centrex Documents show that Qwest has a long-standing policy to hinder Centrex

METRONET SERVICE CORPORATION'S REPLY TO QWEST'S  
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1 resellers. Per location pricing and related restrictions, developed to further these policies, *remain*  
2 *in effect* and constitute Qwest's *current* behavior towards resellers. *See* Exhibit 383 at p. 4. The  
3 fact that Qwest originally implemented them to hurt Centrex resellers, not to recover legitimate  
4 costs, supports MetroNet's claims that they "unreasonably" discriminate against resale.

5 **D. FCC ORDERS DO NOT SUPPORT QWEST'S POSITION**

6 Qwest erroneously argues that the FCC has already ruled that the issues raised by  
7 MetroNet cannot be considered in Section 271 proceedings. For example, Qwest believes that it  
8 does not discriminate as long as it treats MetroNet equal to other carriers "*under the relevant*  
9 *tariff,*" (*emphasis added*), citing the FCC's First Report and Order in the Local Competition  
10 Docket. Answer at 8. Again, whether the Centrex Documents show discrimination is an issue  
11 for the Commission to decide, not Qwest. Also, Qwest distorts the plain meaning of the Local  
12 Competition Order. Under Qwest's novel interpretation, LECs could legally place discriminatory  
13 conditions in tariffs, so long as all resellers have equal access to the tariffed services. This would  
14 render the protections of Section 251 meaningless. Of course, Qwest cites no support in the Act  
15 for this position.

16 **E. CONCLUSION**

17 For the foregoing reasons, MetroNet requests the Commission to admit the  
18 Centrex Documents as exhibits in this proceeding.

19 DATED this 12<sup>th</sup> day of January, 2001

20 MILLER NASH LLP

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