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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

COMMENTS OF METRONET  
SERVICES CORPORATION ON  
INITIAL ORDER FINDING  
NONCOMPLIANCE IN THE AREAS OF  
INTERCONNECTION, NUMBER  
PORTABILITY AND RESALE

**I. INTRODUCTION**

MetroNet Services Corporation ("MetroNet") appreciates the time and effort the Commission staff expended and the numerous difficult issues with which the staff dealt in its initial findings and decisions on Qwest's compliance with the requirements of Section 271 Checklist Item 14, Resale with regard to Centrex products. However, MetroNet asks the staff to revisit the initial order's conclusion that the per location pricing scheme for Centrex features is *not* an unreasonable restriction on resale. MetroNet submits that that conclusion cannot be reconciled with the conclusion that the very same pricing scheme for Centrex station lines *is* an unreasonable restriction on resale. MetroNet respectfully submits that while the latter conclusion is correct, the former is in error. The error appears to have arisen from the staff's belief that the Commission had previously approved per location pricing for Centrex features in another docket, UT-970763. The record is clear that the Commission gave no such approval.

The record in this docket overwhelmingly supports the staff's initial conclusion that—as to Centrex station lines—per location pricing is an unreasonable restriction on resale. Per location pricing was designed by Qwest specifically to thwart the ability of resellers to

1 aggregate customers at different locations in order to obtain volume discounts. If resale is to  
2 achieve one of its key purposes of driving retail rates closer to costs, it is critically important that  
3 the staff correct the inconsistency in its initial order and find that the per location pricing of *both*  
4 features and station lines is an unreasonable restriction on resale.

5 In order to ensure that Qwest does not continue to engage in anticompetitive  
6 behavior, MetroNet also requests the Commission to order Qwest to publish a standard pricing  
7 schedule for Centrex Prime in its tariff and to publish rebate programs. MetroNet also asks the  
8 Commission to ensure that Qwest removes location requirements from its rebate programs so  
9 they do not violate federal law by preventing resellers from being able to receive volume  
10 discounts that take the form of rebates.

## 11 **II. DISCUSSION**

### 12 **A. THE COMMISSION SHOULD FIND THAT A LOCATION-BASED PRICING** 13 **SCHEME USED BY QWEST FOR ANY OF ITS CENTREX PRODUCTS IS AN** 14 **UNREASONABLE RESTRICTION ON RESALE.**

#### 15 1. Per location pricing is unreasonable whether it is applied to station lines, features 16 or both.

17 The first sentence of Paragraph 275 of the Initial Order Finding Noncompliance in  
18 the Areas of Interconnection, Number Portability and Resale ("Initial Order") concludes:

19 Consistent with the Commission's previous orders on this topic, a per location  
20 restriction on the provision of the station line for resale purposes is an  
21 unreasonable restriction on resale, and cannot be included in Qwest's SGAT.

22 MetroNet agrees that a per location restriction on station lines is an unreasonable restriction on  
23 resale. However, it is an unreasonable restriction on Centrex resale whether it is applied to the  
24 station lines, features, or to an entire product such as Centrex Prime where the lines and features  
25 are bundled together. Because Centrex resellers aggregate customers at multiple locations, per  
26 location pricing of any Centrex product restricts the ability of resellers to obtain volume  
discounts that Qwest makes available to large customers. It is inexplicable why the Commission  
would be inconsistent in finding per location pricing unreasonable with respect to station lines,

1 but reasonable with respect to other Centrex products when per location pricing has the same  
2 effect of restricting Centrex resale. As shown in the Initial Order at ¶ 274, the Commission itself  
3 previously determined the per location pricing scheme to be discriminatory with respect to  
4 Centrex service consisting of features and station lines bundled together.

5 It is immaterial for Section 271 purposes that Centrex features are competitively  
6 classified. The Initial Order states plainly that "the Commission expressly stated that  
7 competitive services are subject to resale" and that the Telecommunications Act of 1996 (the  
8 "Act") "makes no distinction between competitively classified services and those not so  
9 classified" with respect to resale requirements. Initial Order at ¶ 273. Thus, all Centrex services,  
10 even Centrex features, are subject to Section 251(c)(4) of the Act, 47 U.S.C. § 251(c)(4), which  
11 prohibits discriminatory and unreasonable restrictions and limitations on resale of services by  
12 incumbent local exchange carriers.

13 Resale restrictions are presumed to be unreasonable unless the ILEC proves to the  
14 state commission that the restriction is reasonable and non-discriminatory. In the Matter of  
15 Local Competition Provisions in the Telecommunications Act of 1996, CC Dockets No. 96-98  
16 and 95-185, First Report and Order, 11 F.C.C.R. 15499, 15964 (1996) ("Local Competition  
17 Order"). The Federal Communications Commission singled out restrictions on volume  
18 discounts, such as the location restrictions at issue here, as presumptively unreasonable, because  
19 they produce anticompetitive results without sufficient justification. Id. at 15971. The Federal  
20 Communications Commission stated that it was presumptively unreasonable for incumbent local  
21 exchange carriers ("ILECs") to require individual reseller end users to comply with ILEC high-  
22 volume discount minimum usage requirements as long as the reseller in the aggregate meets the  
23 minimum level of demand. Id. Because the customer base a reseller seeks to aggregate is found  
24 at multiple locations, the per location pricing scheme thwarts the ability of a reseller to obtain  
25 volume discounts. Transcript at 2657-2659. It is immaterial whether the scheme is applied to  
26 the station line or the features because application to either is equally harmful to resale.

1           The per location pricing scheme as applied to Centrex features has precisely the  
2 effect of denying resellers the opportunity to aggregate customers to obtain volume discounts  
3 and thwarting resale. A Centrex Plus customer with fewer than 20 lines at a single location pays  
4 \$6.68 per month per line for the features, while a customer with 50 lines at a single location pays  
5 \$1.17 per month per line for the same features. Qwest Washington Price List, section 9.1.16,  
6 Original Sheet 36, Effective August 30, 2000. Centrex resellers, such as MetroNet, serve  
7 primarily customers with fewer than 20 lines at one location, but in the aggregate serve more  
8 than 50 lines through a single central office. Transcript at 2657-2659. Thus, the per location  
9 scheme significantly raises the costs to MetroNet of providing Centrex services and reduces its  
10 margins, hindering its ability to compete. Transcript at 2659.

11           The unrebutted record established that there is no cost or technical justification for  
12 the per location pricing scheme as applied to features. Mr. Wilson testified that the per location  
13 pricing scheme for features has no relationship to costs or technical considerations. Transcript at  
14 2667. The costs to provide vertical switching features to any given line are the same.  
15 Exhibit 383 at 4. The per location pricing scheme is discriminatory with respect to features  
16 because it costs Qwest no more to provide vertical switching features to different locations of  
17 resellers than to provide these features at a single location to Qwest's favored large customers  
18 Exhibit 383 at 5. Qwest has not refuted this cost testimony and has offered no cost or technical  
19 justification for per location pricing of Centrex features.

20           Qwest has also applied per location pricing to its Centrex Prime product, in which  
21 the station lines and features are bundled. Qwest has offered no justification for this scheme.  
22 Not surprisingly, there has been no resale of Centrex Prime in Washington. Thus, this bundled  
23 per location pricing scheme, which does include station lines, should also be found to be an  
24 unreasonable and discriminatory restriction on resale. The Initial Order at ¶ 274, fn 62, states  
25 that the Commission does not find per location pricing of Centrex Prime unreasonable because  
26 resellers wishing to avoid the per location pricing restrictions of Centrex Prime may do so

1 through purchase of Centrex station lines from Qwest's tariff. Availability of station lines from  
2 the tariff is irrelevant because the per location pricing scheme operates here as an unreasonable  
3 restriction on resale of a telecommunications service that is different from and uses more  
4 advanced technologies than other Centrex products.

5 MetroNet has previously offered SGAT language to ensure that per location  
6 pricing does not unreasonably restrict Centrex resale and which is attached here as Appendix 1.  
7 The Commission should condition its Section 271 approval on adoption of MetroNet's proposed  
8 SGAT language for Section 6.2.2.9, including the subsection language, as a replacement for the  
9 current language proposed by Qwest.

10 2. The Commission erroneously states that the Commission approved per location  
11 pricing for Centrex features.

12 Paragraph 275 of the Initial Order erroneously states that the Commission  
13 approved the reinstatement of per location pricing for Centrex features in Docket  
14 No. UT-970673. There is nothing in the record of UT-003022 to support this finding of fact. As  
15 shown in Appendix 2, which includes the Docket Sheet for UT-970673 and a Partial Transcript  
16 of the Open Commission Meeting on April 30, 1997 at which per location pricing of features  
17 was discussed, the Commission never approved the reinstatement of per location pricing for  
18 Centrex features.<sup>1</sup> The docket sheet for UT-970673 notes for April 30, 1997: "After discussion,  
19 the Commissioners took no action on the filing allowed the filing to go into effect." (Emphasis  
20 added).

21 A transcript for the April 30, 1997 Washington Utilities and Transportation  
22 Commission open meeting also shows that the Commission accepted the staff recommendation  
23 to take no action on this filing, leaving the price list filing to go into effect on its own terms. The

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25 <sup>1</sup> Since the Commission appears to have taken official notice of Docket No. UT-970673 to  
26 support its finding of fact, MetroNet is attaching the docket sheet and transcript for this docket  
and asks that the Commission also take official notice of these documents that are part of this  
docket.

1 transcript shows that Glenn Blackmon stated to the Commission that the staff was not endorsing  
2 the pricing structure of the filing and was not recommending approval of it. See Appendix 2,  
3 Partial Transcript of the April 30, 1997 WUTC Open Meeting. Thus, there has never been an  
4 endorsement of per location pricing by the Commission with respect to Centrex features. The  
5 Initial Order's statement that the Commission approved the lifting of the per location pricing  
6 restriction for Centrex features in May 1997 is in error.

7 In fact, the transcript shows that the Commission staff took a hands-off approach  
8 because features were competitively classified as a price list service. However, as the  
9 Commission noted in its Initial Order at ¶ 273, for purposes of Section 271, the Act does not  
10 distinguish between competitively-classified services and those not so classified. Thus, the  
11 Commission cannot find that per location pricing of features is reasonable on the basis of  
12 features being competitively classified. The inclusion of per location pricing in Qwest's price list  
13 does not in itself make it a reasonable restriction on resale. There is simply no basis for a finding  
14 that per location pricing is reasonable with respect to Centrex features and such a finding is  
15 inconsistent with the finding that per location pricing is unreasonable with respect to station  
16 lines.

17 3. The Commission has no basis on which to find that the application of per location  
18 pricing to Centrex features is reasonable and nondiscriminatory.

19 Paragraph 275 of the Initial Order states that based on the record before the  
20 Commission, the Commission sees no reason to require a change to the price list offering of  
21 Qwest. The Commission appears to be operating on the assumption that it previously approved  
22 per location pricing of Centrex pricing, which it did not, because there is nothing in the record of  
23 this proceeding to show that per location pricing applied to Centrex features is a reasonable and  
24 nondiscriminatory restriction on resale. Given that the Commission found that per location  
25 pricing is unreasonable when applied to station lines because it thwarts resale by denying  
26

1 resellers the opportunity to aggregate and obtain volume discounts, it is inexplicable that the  
2 Commission has not made the same finding with respect to features and bundled products.

3           The record is devoid of any cost or other justification by Qwest for application of  
4 per location pricing to Centrex features. On the contrary, MetroNet has offered sufficient  
5 evidence as noted above that per location pricing applied to Centrex features cannot be justified  
6 on the basis of cost or technology and that it harms Centrex resellers and ultimately competition.  
7 The record also shows an intent by Qwest to restrict resale by using per location pricing. See  
8 Exhibit 483-C., at USW 041366.

9           It appears that the Commission is somehow permitting per location pricing to be  
10 applied to features because they are competitively classified when the law clearly does not make  
11 this distinction with respect to Section 271. As MetroNet stated in its post-workshop brief, the  
12 Section 271 determination in no way implies that the Commission would be exercising price  
13 control over services classified as "competitive" under state law. Qwest would be free to  
14 maintain its pricing scheme or change it in order to obtain approval to provide in-region long  
15 distance services. See Exhibit 383 at 6-7.

- 16           4.     A finding that Centrex features are available to resellers on the same terms and  
17                 conditions as Centrex end users is not the end of the inquiry regarding whether  
18                 per location pricing is an unreasonable restriction on resale.

19           In Paragraph 275 of the Initial Order, the Commission appears to be justifying per  
20 location pricing for Centrex features because it is available to resellers on the same terms and  
21 conditions as retail end users. Under Section 271, this does not end the inquiry as to whether per  
22 location pricing restrictions are reasonable.

23           The Federal Communications Commission was concerned that volume discounts  
24 could be discriminatory with respect to resellers even though the same terms and conditions were  
25 applied to both resellers and retail end users. With respect to the application of volume  
26 discounts, the Federal Communications Commission specifically stated:

1 [I]t is presumptively unreasonable for incumbent LECs to require individual  
2 reseller end users to comply with incumbent LEC high-volume discount minimum  
3 usage requirements, so long as the reseller, *in aggregate*, under the relevant tariff,  
4 meets the minimum level of demand. The Commission traditionally has not  
5 permitted such restrictions on the resale of volume discount offers. We believe  
6 restrictions of resale of volume discounts will frequently produce anticompetitive  
7 results without sufficient justification. We, therefore, conclude that such  
8 restrictions should be considered presumptively unreasonable.

9 Local Competition Order at 15971 (Emphasis added). The anticompetitive results of restrictions  
10 on aggregation for purposes of volume discounts by ILECs, such as those imposed by a location  
11 pricing scheme, was anticipated by the Federal Communications Commission. For this reason,  
12 the inquiry must go beyond the terms and conditions offered to resellers and end users and the  
13 Commission must take a hard look at the different impacts that such terms and conditions may  
14 have on resellers. Here, MetroNet has shown that the location pricing of features not only was  
15 intended to prevent resellers from obtaining volume discounts, but that it has an anticompetitive  
16 effect. Therefore, the Commission should order Qwest to remove location pricing restrictions on  
17 Centrex features from its SGAT and to adopt the revised language for Section 6.2.2.9 proposed  
18 by MetroNet.

19 **B. THE COMMISSION SHOULD CHANGE ERRONEOUS FINDINGS OF FACT  
20 AND CONCLUSIONS OF LAW REGARDING RESALE**

21 Finding of Fact Number 43 in the Initial Order, paragraph 331, erroneously states:  
22 "The Commission has prohibited per location pricing restrictions for Centrex station lines, but  
23 has lifted the restriction on per location pricing for Centrex features." As discussed above, the  
24 Commission never approved or endorsed the lifting of the restriction on per location pricing for  
25 Centrex features. Therefore, the reference to the Commission lifting the restriction on per  
26 location pricing for Centrex features should be deleted.

Conclusion of Law Number 23 in the Initial Order, paragraph 358, contains the  
sentence: "Qwest's SGAT provision imposing similar restrictions [per location pricing] on  
Centrex features is consistent with Commission orders and is not an unreasonable restriction on



1 resale." This conclusion of law rests on the erroneous belief that the Commission approved per  
2 location pricing for Centrex features, which as shown above, it did not do. Therefore, the  
3 Commission cannot conclude that per location pricing is consistent with Commission orders. In  
4 fact, the Commission found that per location pricing applied to Centrex Plus by U S WEST,  
5 Qwest's predecessor, at a time when features and station lines were still bundled, was an  
6 impermissible restriction on resale and ordered the location requirement to be removed. WUTC  
7 v. U S WEST Communications, Inc., Docket No. UT-95020, Fifteenth Supplemental Order, at  
8 pp. 126-127 (April 11, 1996). There is no Commission order finding that per location pricing is  
9 a reasonable restriction on resale. Therefore, the conclusion of law must be changed to reflect  
10 that the per location pricing of Centrex features is not consistent with Commission orders.

11 A restriction on resale is presumed to be unreasonable unless the ILEC meets its  
12 burden of proof to show that such restriction is reasonable. Local Competition Order, 11  
13 F.C.C.R. at 15966. 47 C.F.R. § 51.613(b). Qwest has made no showing that the per location  
14 pricing of Centrex features is reasonable. On the other hand, MetroNet has introduced a  
15 significant body of evidence to show that this restriction is unreasonable. Per location pricing of  
16 the features has the same effect on resale as per location pricing of the station lines, which has  
17 been found to be unreasonable. Therefore, the Commission should conclude as a matter of law  
18 that per location pricing of Centrex features is an unreasonable restriction on resale and is not  
19 consistent with Commission orders.

20 **C. THE COMMISSION SHOULD REQUIRE THE UNBUNDLING OF THE**  
21 **STATION LINE FROM FEATURES FOR CENTREX PRIME UNLESS THE**  
22 **COMMISSION ELIMINATES PER LOCATION PRICING FOR THE BUNDLED**  
23 **PRODUCT.**

23 In the Initial Order, the Commission failed to find that the per location pricing for  
24 Centrex Prime was unreasonable because resellers wishing to avoid the per location pricing  
25 could purchase Centrex station lines from Qwest's tariff. Initial Order at p. 77, fn 62. The  
26 Commission's response fails to recognize that Centrex Prime is a unique Centrex product that

1 offers high-speed data services as well as voice services and differs from other Centrex products.  
2 Restrictions on resale of Centrex Prime would prevent resellers from offering their customers  
3 newer, more advanced Centrex technologies. Aggregation of smaller customers by resellers  
4 permits these customers to take advantage of more advanced services at competitive prices. Per  
5 location pricing operates as a restriction on resale with respect to the bundled Centrex Prime  
6 product because it restricts resellers from aggregating smaller customers to obtain volume  
7 discounts that Qwest offers to its large volume retail customers.

8           If the Commission declines to remove per location pricing for Centrex Prime, it  
9 should unbundle the station lines from the features. Because the Commission has clearly stated  
10 that per location pricing of station lines is a restriction on resale, resellers would be free of such  
11 restrictions with respect to station lines if the product were unbundled. If the product remains  
12 bundled and resellers cannot take advantage of volume discounts, the bundled product would  
13 operate as a restriction on resale by making it impossible for resellers to aggregate customers. If  
14 the Commission does not order Qwest to remove per location pricing for the bundled product, in  
15 order for the Centrex Prime pricing scheme to be found a reasonable restriction on resale in line  
16 with the pricing schemes of other Centrex products, the station line would need to be unbundled  
17 from the features and be free of per location pricing restrictions.

18 **D. THE COMMISSION SHOULD ORDER QWEST TO PUBLISH A STANDARD**  
19 **PRICING SCHEDULE FOR CENTREX PRIME IN ITS TARIFF.**

20           In paragraph 369 of the Initial Order, the Commission ordered Qwest to publish a  
21 standard pricing schedule of Centrex Prime either in its tariff or in the SGAT. MetroNet requests  
22 that the Commission eliminate the SGAT option and order Qwest to publish a standard pricing  
23 schedule for Centrex Prime in its tariff. Centrex Prime is, in part, a monopoly service.

24 Therefore, its terms and conditions should be subject to the same review by the Commission for  
25 compliance with Commission regulations as any other monopoly telecommunications service.

26 The SGAT has been developed for Section 271 compliance purposes and is not the appropriate

1 place to ensure that Centrex Prime terms and conditions, which have remained secret and  
2 inaccessible to resellers, remain available to resellers and the public on an ongoing basis.  
3 Requiring publication of Centrex Prime pricing in the Qwest tariff means that any changes in the  
4 pricing schedule will be reviewed by the Commission on a timely basis to ensure that they are  
5 lawful. Thus, it will be a more meaningful process than publication in an SGAT, which is likely  
6 to have a less structured ongoing review process.

7 **E. THE COMMISSION SHOULD ORDER QWEST TO PUBLISH REBATE**  
8 **PROGRAMS AND OFFER REBATES ON A PER SYSTEM BASIS.**

9 In the Initial Order, the Commission has ordered Qwest to correct the way it  
10 offers rebates to avoid anticompetitive behavior and violations of statutes. Initial Order at ¶ 368.  
11 The Commission has not specifically ordered that this be accomplished in a particular way.  
12 MetroNet urges the Commission to order specifically that Qwest publish any rebate program. It  
13 is not enough that Qwest be told to comply with law because Qwest has ignored such need for  
14 compliance in the past by keeping certain rebates secret. An order to Qwest to publish any  
15 rebate programs prior to the Commission recommending Section 271 approval will ensure that  
16 there will be no secret rebates in the future, such information on rebates will be in the public  
17 domain, and resellers and other customers have equal access to information about such  
18 programs.

19 The Commission should also require that such rebate programs be made available  
20 on a per system basis. As MetroNet stated in its earlier brief, such secret programs have  
21 included location requirements for rebates, which would preclude resellers from taking  
22 advantage of such rebates. The elimination of per location requirements from such programs  
23 would ensure that such programs do not discriminate against resellers by preventing them from  
24 aggregating their multiple end users to obtain the volume discounts offered to retail customers in  
25 violation of the FCC's clear direction in its Local Competition Order that resellers be permitted  
26 to aggregate end users to obtain volume discounts. Local Competition Order, 11 F.C.C.R. at

1 15971. The Commission should ensure that Qwest eliminates discriminatory and unreasonable  
2 restrictions against resale by imposing these specific requirements prior to finding that Qwest has  
3 met the required showings under Section 251(c)(4) for Section 271 approval.

4 **III. CONCLUSION**

5 The Commission should not approve Section 271 relief for Qwest unless:

6 1. Qwest adopts the revision of Section 6.2.2.9 of the SGAT proposed by  
7 MetroNet to eliminate location pricing consistently for all elements of Centrex products as an  
8 unreasonable restriction on resale;

9 2. Qwest publishes a standard pricing schedule for Centrex Prime in its tariff;  
10 and

11 3. Qwest publishes rebate programs for Centrex services and offers all  
12 rebates for Centrex on a per system basis.

13 If the Commission does not eliminate location pricing for Centrex Prime, it  
14 should require that station lines be unbundled from features so that there are no location  
15 restrictions on Centrex Prime station lines consistent with other Centrex services.

16 Additionally, the Commission should change its finding of facts and conclusions  
17 of law regarding Centrex resale to show that the Commission did not previously approve per  
18 location pricing for Centrex features or cannot conclude that it is a reasonable restriction on  
19 resale.

20 DATED this \_\_\_\_\_ day of April, 2001.

21 MILLER NASH LLP

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