

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-058AT

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IN THE MATTER OF THE APPLICATION OF OMNETRIX INTERNATIONAL, INC. TO  
DISCONTINUE OR CURTAIL JURISDICTIONAL TELECOMMUNICATIONS SERVICE.

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**ORDER GRANTING JOINT MOTION  
TO APPROVE PROPOSED TRANSITION PLAN  
AND REQUEST TO WAIVE RESPONSE TIME**

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Mailed Date: April 9, 2004  
Adopted Date: April 8, 2004

**I. BY THE COMMISSION**

**A. Statement**

1. This matter was heard by the Commission *en banc* pursuant to a joint motion filed by the Colorado Office of Consumer Counsel (OCC), Commission Staff (Staff), and Omnetrix International, Inc. (Omnetrix). The parties filed the joint motion to approve a proposed Transition Plan to transfer approximately 1,350 Omnetrix customers to the provider of last resort (POLR), in this case, Qwest Corporation (Qwest). Those customers would then be given written notice and an opportunity to choose a different provider. Qwest, although not a party to the motion, nonetheless supports the motion. The parties also request that response time be waived to this motion.

2. A hearing was held before the Commission on April 8, 2004 to receive testimony and evidence regarding the Transition Plan. All parties offered testimony and evidence. The parties requested that this be handled in an expedited manner in order to prevent as much disruption as possible to the affected Omnetrix customers. Accordingly, because the parties had received sufficient notice regarding the hearing set in this matter and were in attendance, and

because none of the affected parties objected, we conducted expedited deliberations immediately following the hearing.

3. Now, being duly advised in the matter, we grant the joint motion consistent with the discussion below.

4. This matter originated on February 10, 2004 when Omnetrix doing business as The Home Phone Company filed Advice Letter No. 5 along with an application to discontinue providing local exchange telecommunications services and emerging competitive telecommunications services in Colorado. According to the application, Omnetrix indicated that all of its customers are being served pursuant to a Wholesale Services Agreement with Colorado Teleserv, Inc. (CTI). On February 17, 2004, Omnetrix filed a letter requesting to withdraw the application for discontinuance, representing that it had resolved the financial problems that caused it to file to discontinue service.

5. Staff, OCC, and Qwest intervened and requested a hearing in this matter and opposed the request of Omnetrix to withdraw its application to discontinue service. In its intervention, Qwest represented that Omnetrix had failed to meet payment deadlines it had negotiated with Qwest for past due amounts, despite Qwest's extension of the deadline for disconnecting Omnetrix several times.

6. In Decision No. C04-0196, we requested additional information from Omnetrix prior to determining whether to consider its request to withdraw its application for discontinuance. Additionally, we ordered Qwest not to disconnect Omnetrix's wholesale services until further order of the Commission.

7. In response to our request for additional information, Omnetrix admitted that it owed Qwest for approximately 150 customers served on its own billing account numbers (BANs) and for approximately 1,200 customers served on CTI's BANs. Omnetrix also conceded that Qwest had issued it two separate notices of disconnection. Omnetrix also indicated that it had reached an agreement in principle to retire all past due amounts. However, Qwest subsequently filed a status report with the Commission indicating that Qwest and Omnetrix were unable to reach a settlement regarding past due amounts owed.

8. Qwest also requested that this matter be heard by the full Commission or a Hearing Commissioner in order to expedite an order approving a transition plan.

9. In the joint motion and at hearing, the parties indicate that approximately 1,200 Omnetrix customers are currently being served on CTI's BANs as part of a Wholesale Services Agreement between CTI and Omnetrix. Testimony also reveals that Omnetrix customers have become confused by a disconnection notice sent by DHS West, LLC (DHS) as a secured creditor of Omnetrix. Mr. Tim Wetherald is identified as manager of DHS. Due to extreme confusion by Omnetrix's customers, the parties request that an expedited transition be implemented to transfer customers at risk of loss of telephone service to a default provider.

10. The parties presented their Transition Plan at the hearing, describing it as a "Snap-Back" plan. The parties propose that Qwest, the POLR in this matter, be designated as the default provider for all Omnetrix customers, including those served on Omnetrix's and CTI's BANs. This will ensure that no customer will lose telephone service. The parties then propose that these customers be provided notice of the transfer and of the right to choose an alternate provider from a list provided by OCC and Staff. Affected customers will not be charged for the

transfer to the default provider. The parties made several changes to the notice form and the Transition Plan at hearing, adding language to both documents clarifying the contents of both.

11. In the joint motion, the parties request that we waive the requirement to use Form A customer notice as required by 4 *Code of Colorado Regulations* (CCR) 723-25-7.7, since they plan to use an alternate notice to accommodate the timing and approach of the unique transition plan proposed here.

12. The parties further request we waive Rule 4 CCR 723-2-7.6(d) to attach the most recent jurisdiction list of local exchange providers maintained by the Commission. Instead, the parties propose to substitute a list of alternative providers prepared by Staff and the OCC, as Attachment C to the Transition Plan. The parties also request waiver of the Commission's slamming rules at 4 CCR 723-2-25, including the requirement to obtain a letter of agency from the customer authorizing a change of providers.

13. The parties request waiver of 4 CCR 723-2-27.4.1, which requires customers who commence service to be informed by the local exchange carrier of their interLATA and intraLATA toll carrier options. Customers who have Omnetrix long distance will be advised by the notice that they have been defaulted to Qwest's long distance service, if available, but they may choose another carrier at any time.

14. The parties request waiver of any claim of "cramming" or unauthorized charges on a customer's bill that may appear inadvertently when a customer's enhanced service or package is transferred. The parties represent that this waiver is required since the default provider's and Omnetrix's bundled service offerings may not be exactly the same.

15. Further, the parties request that Omnetrix be required to provide a list of its customers serviced on its own BANs and CTI's BANs to Qwest as default provider, and to file the list confidentially with the Commission within two business days of Commission approval of the transition plan. Should Omnetrix fail to provide the list as ordered, Qwest is to notify the Commission and the parties as soon as practicable. Qwest wholesale operations is then ordered to provide the necessary customer information to Qwest retail operations to meet its obligations as default provider.

**B. Analysis**

16. We find the proposed Transition Plan and notice form as amended by the parties at the hearing to be in the public interest. The proposed Transition Plan provides a sound method to transfer Omnetrix's customers to Qwest in as seamless and transparent a process as possible under the circumstances. As always, ensuring that customers are not deprived of telephone service is of paramount importance when a telecommunications provider ceases operations. We believe the plan proposed by the parties here serves that purpose. The Snap-Back plan as proposed is a creative approach to ensure that customers are not deprived of phone service needlessly. We applaud the efforts of the parties here to develop such a plan in such a short period of time. We also recognize Omnetrix for its cooperation in ensuring a smooth transition for its customers to the default provider.

17. We agree with the parties that certain Commission rules should be waived in this matter to help facilitate a smooth transition of customers. We therefore find that it is prudent to waive our "slamming" and "cramming" rules as they may apply to Qwest and Qwest Long Distance in this transition of Omnetrix customers. We find it in the public interest to designate

Qwest, pursuant to 4 CCR 723-25-7.6(g), as the default provider for all Omnetrix customers, including those served on Omnetrix's and CTI's BANs.

18. We also waive the requirement under 4 CCR 723-25-7.7 to use Form A to notify Omnetrix customers of the transition plan. In addition, we find it prudent to waive the requirement under 4 CCR 723-25-7.6(d) to attach the most recent jurisdictional list of local exchange providers maintained by the Commission, and instead substitute the list of providers compiled by Staff and OCC.

19. We also waive our Rule 4 CCR 723-2-27.4.1 requiring customers who commence service to be informed by the local exchange carrier of their interLATA and intraLATA toll carrier options. As the parties requested, the Omnetrix customers who have Omnetrix long distance will be advised by the notice in the transition plan that they have been defaulted to Qwest's long distance service, if available, but may choose another carrier at any time.

20. The parties also request that we order Omnetrix to provide a list of its customers served on its own BANs and CTI's BANs to Qwest and the Commission within two business days of Commission approval of the transition plan. We note that Omnetrix provided the Commission and the parties with a CD that it represented contains such a customer service list. To the extent that list is deficient in any manner, we order Omnetrix to supplement the list it provided at hearing. In addition, we order that Qwest's wholesale operations are authorized to communicate with its retail operations concerning the affected customers in order to meet Qwest's obligations under the Transition Plan.

21. We order Qwest to issue the notice as modified at hearing to Omnetrix's customers immediately upon transfer of those customers to its service. We also find that no

specific order regarding PIC charges is needed, and Qwest need not segregate affected customers for different treatment. Finally, we adopt the transition plan and notice form as proposed in the Joint Motion and as modified by the parties at hearing, and order that the plan be implemented immediately upon the effective date of this Order. The approved transition plan and notice are appended to this Order.

22. We note that this docket and hearing was intended solely to expedite a transition plan for those affected Omnetrix customers. However, during the course of this matter and hearing, it became evident that serious issues still exist regarding possible violations of Commission rules. We therefore reserve the possibility of raising these issues on our own motion via a show cause proceeding or an investigatory docket. We also acknowledge that any other party may raise these issues at a future date as well.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Transition Plan and Notice proposed by Commission Staff, the Colorado Office of Consumer Counsel, and Omnetrix International, Inc., and supported by Qwest Corporation, and modified at hearing is approved consistent with the discussion above. The approved transition plan and notice are appended to this Order.

2. Commission rules addressing the transition process and slamming and cramming prohibitions as specifically identified above are waived.

3. We authorize Qwest Corporation wholesale operations to communicate with its retail operations to the extent necessary to meet Qwest Corporation's obligations under this Transition Plan.

4. The approved Transition Plan and Notice (*see* Attachments A and B) are to be implemented immediately.

5. Response time to the Joint Motion is waived.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING  
April 8, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners