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March 26, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Notice of Ex Parte Communication in Implementation of
the Local Competition Provisions in the
Telecommunications Act of 1996, CC Docket No. 96-98**

Dear Ms. Salas:

Yesterday, on behalf of Qwest Communications Corporation ("Qwest"), the undersigned of Hogan and Hartson L.L.P. and Genevieve Morelli, Senior Vice President, Government Affairs and Senior Associate General Counsel, Qwest, met with Tom Power, Legal Advisor to Chairman William E. Kennard. The purpose of the meeting was to discuss the issues to be considered by the FCC on remand from the U.S. Supreme Court's decision in AT&T v. Iowa Utilities Board, S.Ct. No. 97-826, et al. (Jan. 25, 1999). The points made in the attached handout were discussed at the meeting. The attached materials from state commission proceedings, which are relevant to the remand proceeding, also were distributed and discussed at the meeting.

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Ms. Magalie R. Salas

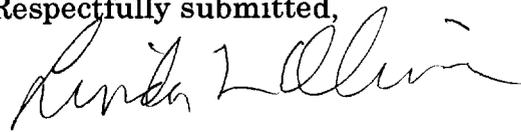
March 26, 1999

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I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda L. Oliver".

Linda L. Oliver
Counsel for Qwest Communications
Corporation

Enclosures

cc: Tom Power

Interchangeability, Impairment and Wholesale Competition

March 1999

CC Docket No. 96-98

Qwest Communications Corporation

I. The Supreme Court's remand of Rule 319 requires that the Commission consider "necessary and impair" *from the perspective of the requesting carrier.*

- A. Section 251(d)(2) requires the Commission to consider, at a minimum, whether:
 - 1. "access to such network elements as are proprietary in nature is necessary;" and
 - 2. "the failure to provide access to such network elements would impair *the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.*" (emphasis added)
- B. The Court disagreed with the FCC's view that even the most minimal decrease in quality or increase in cost constituted impairment. The Court also disagreed with the FCC's use of a standard that did not consider at all whether facilities are available from other sources.
- C. However, the Court also concluded that a decrease in quality or an increase in cost at some level could constitute impairment.
- D. In order to determine whether alternative facilities are available in a manner which does not "impair" the requesting carrier's ability to provide service, the Commission must address conditions in the *wholesale* network element market.

II. The fundamental conditions necessary to establish a functioning wholesale network element market are (a) interchangeability of network elements; and (b) a sufficient number of providers to assure a competitive result.

A. Interchangeability. One prerequisite to a functioning wholesale network element market is the "interchangeability" of network elements.

1. "Interchangeability" – the transparent and seamless substitution of a competitively-supplied network component for an ILEC-supplied element -- is an operational concept that is satisfied only when a competitively-provided network component can be substituted easily for ILEC-provided elements, without a material delay, reduction in quality, or increase in cost.
2. *Achieving "interchangeability" -- i.e., the transparent and seamless substitution of a competitively-supplied network component for an ILEC-supplied element -- requires the full implementation of operational reforms designed to support an evolving "network of networks."*

B. Sufficient number of wholesale providers.

1. Only after operational reforms have been implemented to achieve interchangeability among network elements for any supplier of elements does the second fundamental condition for a functioning wholesale market become relevant.
2. The second condition requires that a sufficient number of network vendors be present in a particular market to produce *effective wholesale competition*.

III. The *operational reforms* necessary to achieve "interchangeability" and provide the foundation for a functioning competitive wholesale network element market are not in place.

- A. Non-discriminatory UNE-provisioning systems must be implemented which make the cost, speed, and ease of interconnecting a competitively supplied network element equivalent to the cost, speed, and ease with which the ILEC uses its own network elements to provide service to customers.
1. Where ILEC elements are typically interconnected or operationalized using automated or mechanized provisioning systems, equivalent automated systems should be implemented for competitively supplied elements.
 2. *For instance, where ILEC systems automatically provision local switching in combination with unbundled local loops, a similar automated capability would be necessary for competitively supplied local switching to become an "impairment-free" substitute for the ILEC-provided local switching.*

- B. Any other factor which "impairs" the viability of competitively-provided facilities must be removed so that a functioning wholesale network element market can develop. These could include, for example, discriminatory access to rights-of-way, and lack of number portability.

- C. By linking the ILEC's obligation to provide a network element to a policy of interchangeability, the Commission will provide the appropriate incentive for the ILEC to develop the systems needed so competitively-supplied network elements can be integrated into the network on terms equal to that of ILEC-supplied elements.

- D. Establishing nondiscrimination at the network element level will accelerate the deployment of competitively provided facilities and produce a true "network of networks."

IV. The Act obligates the Commission to determine whether a competitive wholesale network element market has developed.

- A. The basic conditions necessary for "interchangeability" are not market-specific and should be evaluated by the FCC.
 - 1. Provisioning systems for UNEs are generally developed and implemented by each ILEC for its entire region.
 - 2. *The FCC should retain responsibility to (1) evaluate the threshold conditions for a competitive wholesale market; and (2) determine whether the operational practices necessary to achieve interchangeability have been implemented.*
- B. Only after an ILEC's systems have been certified by the FCC to comply with its interchangeability policies do market-specific factors become relevant.

- C. The burdens that state-by-state assessment of whether a wholesale market has developed would freeze the development of competition, particularly at this initial stage where such reviews would raise entrants' costs through unnecessary litigation expense and delay.
1. Few CLECs could afford to repeatedly litigate, *de novo*, the availability of each network element in every state in which a carrier wishes to provide service.
 2. ILECs already are suggesting that state commissions should require CLECs to respond to lengthy and burdensome "information requests" regarding their need for network elements and the availability of network elements. (See, e.g., attached Bell Atlantic-New Jersey reply comments regarding the impact of the Supreme Court's decision in the New Jersey "Mega Docket," at p. 9 and Exhibit 1)
 3. Small and medium CLECs cannot survive if ILECs can force them to negotiate, arbitrate, and file complaints with state commissions for *every* UNE in *every* locality, for *every* end office, and for *each* particular customer the CLEC seeks to serve. (See attached comments of Premier Network Services, Inc. in the Texas Section 271 Proceeding at pp. 10-11). See also attached statements of SWBT in response to TX PUC staff questions (at p. 11) and Bell Atlantic-New York (at pp. 8-9) suggesting that UNE availability should be determined at this micro level).
 4. ILECs could easily force CLECs into protracted negotiations and litigation even where the ILEC knows it will lose because the delay would be sufficient to cause potentially irreparable harm to the CLEC. (See attached comments of Premier in the Texas Section 271 Proceeding at p. 11-12).