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EX PARTE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

November 12, 1999 **EX PARTE**

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20544

Re: Ex Parte Presentation in In re Applications of U S WEST, Inc., Transferor, and Qwest Communications International, Inc., Transferee, for Consent to Transfer Control, CC Docket No. 99-272

Dear Ms. Salas:

On November 10, 1999, David Conn, William Courter and I of McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") as well as Phil Verveer and Thomas Jones of Willkie Farr & Gallagher met with Margaret Egler, David Kirschner, and Henry Thaggert of the Common Carrier Bureau to discuss the Commission's review of the proposed merger between U S WEST, Inc. ("U S WEST") and Qwest Communications International, Inc. ("Qwest"). During the meeting, we explained why the proposed merger will cause U S WEST's already terrible service record as a wholesale provider to get even worse. We explained that the Commission must therefore require, as it did in its SBC-

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Ameriterch Order,[1] that the merged entity meet conditions designed to address the increased incentives and opportunities for predation created by the transaction. I have provided below a more detailed description of our presentation.

The presentation consisted of four basic points. First, we explained that U S WEST and Qwest have not placed on the record enough information to determine whether the merger is in the public interest. In fact, I told the staff that I believed that the information provided was so inadequate that the filing would not survive a motion to dismiss in any court in which I had practiced. Even when pressed by the Commission to provide details regarding its plans to comply with the requirements of Section 271, the applicants submitted a proposal fraught with loopholes. Those loopholes give the merged entity the ability to establish a significant presence in the provision of in-region bundled local and interLATA services before complying with the requirements of Section 271(d). This would result in a violation of Section 271(a).[2] We therefore explained that the Commission must at the very least review the actual terms of the divestiture to ensure that this does not occur.

Second, we explained that U S WEST's record as a provider of wholesale inputs to CLECs such McLeodUSA operating in its region has been terrible. For example, McLeodUSA's central vehicle for local entry is Centrex resale. The cost of this strategy in the U S WEST region has been artificially high, however, because U S WEST has engaged in both crude and subtle means of denying, delaying and degrading McLeodUSA's access to wholesale Centrex service. McLeodUSA has experienced similar discriminatory access to the

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1 See Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1999) ("SBC-Ameritech Order").

2 See AT&T v. Ameritech Corp., Qwest Communications Corp. and AT&T v. US WEST Communications, Inc. and Qwest Communications Corp., Memorandum Opinion and Order, 13 FCC Rcd 21438 aff'd U S WEST Communications, Inc. v. FCC, No. 98-1468 (D.C. Cir. June 8, 1999).

inputs it needs (such as interconnection trunks) to transition resale customers to its own facilities in the U S WEST region.

Third, and most importantly, we explained why the proposed merger will make an already bad situation much worse. In short, the merger will cause the merged firm's incentives and opportunities for predation to increase in the long distance and local markets. On the long distance side, U S WEST currently has an incentive to degrade the terminating access service it provides to all long distance carriers. This is because U S WEST hopes some day to enter the in-region long distance business itself. This incentive may not be especially strong, however, since U S WEST has not been able to capture all of the benefits associated with degraded access. If it merges with Qwest, U S WEST will be able to capture a much greater proportion of the benefit of degrading terminating access (for all IXCs except Qwest) because such behavior will make it more likely that customers outside of the U S WEST region will choose Qwest as their long distance carrier.[3] Similarly, U S WEST will be able to capture a greater proportion of the benefits of discriminating against CLECs entering its region because such discrimination will harm those CLECs' ability to compete with Qwest's high-speed local access and Internet access operations outside of the U S WEST region. Where U S WEST can obtain more benefits from discrimination, it is likely to increase the extent to which it discriminates in practice. In this sense, the increased incentives for predation are virtually identical to those recognized by the Commission in its SBC-Ameritech Order. See SBC-Ameritech Order at ¶¶ 186-193.[4]

As we also explained, the merged firm's opportunities to engage in predation will be much greater than is currently the case with U S WEST. This is because the merger will immediately increase the size and scope of the non-ILEC operations affiliated with U S WEST. As a result, it is likely to become much more difficult for regulators to ensure that the ILECs receive adequate resources to provide retail and wholesale service at an acceptable level of quality. Indeed, the merging firms have already announced their

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3 Thus, the merged firm's incentive to predate would be much worse even before it enters the in-region interLATA market.

4 As we explained, at the very least, these harmful incentives cancel out any increased incentive for Section 271 compliance that Qwest may introduce to U S WEST.

plan to slash the U S WEST dividend and to redeploy the $5.3 of resulting "savings" to non-ILEC investments. See Qwest S-4 at 28. The risks associated with these investments will be difficult to track and evaluate. If those investments turn sour, there can be no question that the ILEC will end up footing the bill by either degrading services (lowering costs) or raising prices.

All of this shows that the FCC should not approve the proposed merger between U S WEST and Qwest without establishing conditions designed to limit the harmful consequences of the merger. As we explained, these conditions should include substantive performance benchmarks, reporting requirements and penalties to ensure that U S WEST ILECs provide adequate wholesale service. As we also explained, the conditions should include procedural mechanisms to improve the likelihood of compliance with the ILECs' wholesale obligations. Such procedural mechanisms should include the requirement that in-house attorneys be assigned the task of reviewing all ongoing and proposed business practices to ensure compliance with the letter and spirit of the 1996 Act. In addition, special arbitration procedures should be established for resolution of disputes regarding the provision of wholesale inputs.

In conclusion, we summarized our view that this merger has not received the attention it deserves. It is tempting for regulators to identify this transaction as the one mega-merger to approve quickly. But to do so would harm competition and consumers both within and outside the U S WEST region. Summary approval without appropriate conditions would also be arbitrary and capricious, since this merger raises fundamentally the same concerns that the Commission decided mandated the imposition of conditions in SBC-Ameritech.

At the Staff's request, we are submitting a letter from a senior attorney at Qwest disavowing any plans to divest Qwest's in-region, interLATA business after the merger as well as materials distributed during the meeting. Copies of this correspondence are included in accordance with the Commission's rules.

Sincerely,

Randall Rings

Randall Rings
Vice President and
General Counsel

cc: Margaret Egler
David Kirschner
Henry Thaggert

Enclosures

Qwest.

4250 NORTH FAIRFAX DRIVE, ARLINGTON, VIRGINIA 22203

Overnight Delivery

September 6, 1999

Mr. Scott F. Cate, President
Access Long Distance
215 South State Street
10th Floor
Salt Lake City, Utah 84111

Dear Mr. Cate:

It has come to the attention of the Office of the General Counsel for Qwest Communications Corporation ("Qwest") that Access Long Distance ("Access") is disseminating statements to Qwest customers containing erroneous and defamatory statements. Based upon reports corroborated by existing Qwest customers, as well as by your own employees, it appears that Access is involved in a marketing scheme targeting Qwest's commercial customers, which involves certain misrepresentations and falsehoods about the impact of the pending Qwest/US West merger. Clearly, the purpose of the communications is to encourage Qwest's customers to terminate their relationships with Qwest in favor of obtaining services from Access. In addition to making erroneous statements concerning certain customer divestiture actions, which are alleged to have already begun, the Access employees and agents are sending Qwest customers written statements which are rife with factually inaccurate statements concerning the regulatory implications of the Qwest/US West merger.

Specifically, the communications contain several false representations, including, the following:

- That Qwest has begun to divest its long distance customers within the U.S. West operating region; and
- That Qwest plans to transfer retail customers in the region to other carriers; and
- That Qwest will discontinue marketing its in-region calling card product.

I am told that Access personnel claim that the basis for such misrepresentations is material received from either Andersen Consulting or from Arthur Andersen. According to representatives of both of these organizations, the materials claimed to have been taken "from an Arthur Andersen Newsletter", were in fact not authored by either organization.

These irresponsible and deceptive statements, made by Access Long Distance employees with the deliberate intent of infringing upon Qwest's sales efforts in the marketplace, violate numerous laws, including, without limitation, state laws protecting against deceptive and unfair trade practices, tortuous interference with contractual relations, and commercial defamation, as well as the Lanham Act.

Accordingly, Qwest hereby demands that Access Long Distance immediately desist from making false and deceptive statements, conduct an immediate investigation of this matter, provide a prompt written response describing the outcome of the investigation, and describe the actions, which have been implemented to prevent Access Long Distance employees from initiating and perpetuating any misrepresentations or defamatory comments about Qwest. I look forward to hearing from you in the immediate future regarding the resolution of this matter. I can be reached at (703) 363-4837. Thank you for your attention to this urgent matter.

Sincerely,

Stuart L. Crenshaw /sab

Stuart L. Crenshaw
Senior Attorney

cc: Roger Attick, Sr. Vice President, Alternate Channel Markets

ride the light

McLeodUSA®

US West/Qwest Merger Concerns

- *Introduction*
  - *Participants*
  - *Summary of Presentation*

McLeodUSA - Overview

Employees	7,800
Geography	21 States
Products	Voice (Local/LD), Data, Directories
Customers	391,400 Business Lines
	124,800 Residential Lines
	100,200 ILEC Lines
Network	9,400 Inter/Intracity Route Miles
Revenue	$960M of Revenue*
EBITDA	Positive for 8 Quarters

* 3Q Annualized

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Telecommunications Act of 1996

- Section 251 Duties
  - May not impose unreasonable or disciminatory conditions or limitations on resale of services
- Section 271 Requirement for Approval of In-Region InterLATA Voice and Data Service
  - Only after meeting requirements of 14-point checklist, and
  - Determination by FCC that InterLATA approval is in the public interest
- Section 271 Reviews
  - State regulatory commissions: Most will conduct initial review of checklist requirements and make recommendation to FCC
  - DOJ: Reviews and makes recommendation to FCC
  - FCC: Makes final decision on checklist requirements and public interest test, with input from state regulators and with "substantial weight" given to DOJ recommendation
- State and Local Governments
  - Required to move barriers to entry

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What's Supposed to be Happening...

Section 271 Sets Forth a 14-point Checklist Requiring the RBOC's to Provide:

1. Interconnection
2. Nondiscriminatory access to network elements
3. Access to its poles, conduits and rights-of-way
4. Unbundled local loop transmission from central office to customer premises
5. Unbundled local transport from trunk side of a switch
6. Local switching unbundled from transport, local loops or other services
7. Nondiscriminatory access to 911, directory assistance and operator services

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What's Supposed to be Happening...con't

Section 271 Sets Forth a 14-point Checklist Requiring the RBOC's to Provide:

8. White page listings for customers of competitive carriers
9. Nondiscriminatory access to telephone numbers
10. Nondiscriminatory access to databases/signaling necessary for call routing
11. Interim number portability
12. Nondiscriminatory access to resources necessary for local dialing parity
13. Reciprocal compensation
14. Resale of telecommunications services

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What's Really Happening...

US West is Monopolizing Local Markets by:

- *Centrex withdrawal*
- *"Make whole" surcharge on Centrex service purchased for resale*
- *Centrex resale restrictions (separate common blocks)*
- *Continued Centrex availability*
- *Line Information Database (LIDB) surcharges*
- *Block compromise and chip-in charges*
- *Station Message Detail Reporting (SMDR) data*
- *Automatic Number Identification (ANI) over dedicated access facilities*
- *Unbundled loop rates*
- *Inadequate electronic bonding interfaces*
- *Trunking delays*
- *Collocations*
- *Voice mail and ISW availability*
- *Voice mail trunks*
- *Discriminatory directory listing rates*
- *Amendments to agreements*
- *Interconnection agreements*
- *Customer cut-over issues*
- *Inadequate resources to provide adequate wholesale services*

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Anti-Competitive/ Anti-Consumer

Centrex

- Centrex withdrawal
- "Make whole" surcharge on Centrex service purchased for resale
- Centrex resale restrictions (separate common blocks)
- Continued Centrex availability
- LIDB surcharges
- Block compromise and chip-in charges
- ANI over dedicated access facilities
- SMDR data

Anti-Competitive/ Anti-Consumer

Systematic Operational Impediments

- *Trunking delays*
- *Unbundled loop rates*
- *Inadequate electronic bonding interfaces*

Anti-Competitive/ Anti-Consumer

Denial of Access to Necessary Facilities

- *Collocations*
- *Voice mail and ISW availability*
- *Voice mail trunks (business decision - refusal to deal)*

Anti-Competitive/ Anti-Consumer

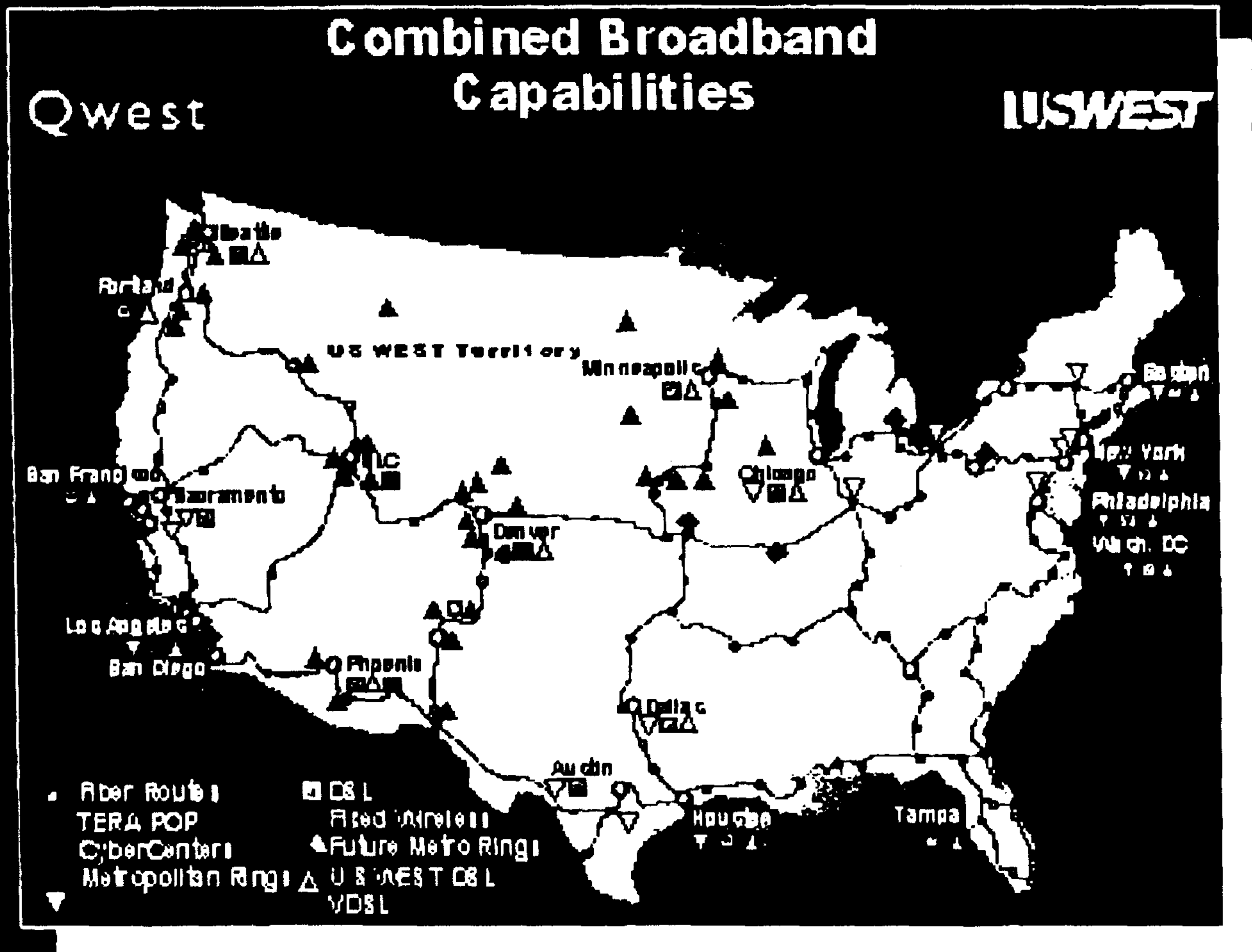
Other Obstructive Acts

- Amendments to agreements
- Interconnection agreements
- Customer cut-over issues
- Inadequate resources to provide adequate wholesale service
- Lack of notice of inadequate resources
- Delays in implementing agreements

Direct Impact of Merger

- *Further deterioration of service*
- *New anti-competitive actions*

Focus Shifting to Tier 1 Only



Source: July 19, 1999 Merger Presentation
URL http://www.qwest.net/qwest/index.html

McLeodUSA

Diversion of Revenues and Resources...

Enhancing the Productivity of Capital

Qwest — US WEST

- Capital redeployment:

	2000–2005
Capital expenditure synergies	$2.2B
Dividend redirected	5.3
Total	$7.5B

- To be re-invested in:
  - Internet applications and hosting
  - Facility based CLEC
  - Out-of-region broadband access, Internet services
  - Wireless expansion
  - Video entertainment

Source: July 19, 1999 Merger Presentation
URL http://www.qwest.net/qwest/index.html

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...planned

Diversion of Revenues and Resources...

US West unveiled "plans to invade rival SBC Communications Inc.'s territory early next year with high-speed internet services."

US West "will leverage the existing California facilities of proposed merger partner Qwest Communications International Inc. of Denver, a long-distance operator that has fiber-optic networks and other operations in the state."

"Qwest and US West have said they will begin offering high-speed Internet services in 25 markets outside US West territory."

U S West to Invade Rival SBC's Territory With Internet Services

NEW YORK – U S West Inc., the Denver regional telephone company, today is expected to unveil plans to invade rival SBC Communications Inc.'s territory early next year with high speed Internet services.

U S West is expected to announce plans to roll out digital subscriber line, or DSL, services to business customers in Sacramento, Calif. SBC's Pacific Bell unit is the dominant carrier in Sacramento.

DSL technology boosts the capacity of traditional copper telephone lines. U S West said it plans initially to provide high-speed Internet service, Internet access, e-commerce solutions and long distance calling.

Joseph Zell, president of U S West's data networking unit, said his company plans to leverage the existing California facilities of proposed merger partner Qwest Communications International Inc. of Denver, a long distance operator that has fiber-optic networks and other operations in the state.

U S West, which serves 14 Western states, is the latest Bell telephone company to announce plans to enter markets outside its former monopoly territory. SBC of San Antonio, has agreed to enter 30 markets outside its home territory, including several cities in U S West territory. Bell Atlantic Corp. and GTE Corp. have pledged to enter 21 new markets if regulators approve their pending merger.

Qwest and U S West have said they will begin offering high speed Internet services in 25 markets outside U S West territory.

U S West is expected to outline its Sacramento plans at a special shareholders meeting in New York today to vote on the proposed Qwest merger.

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...announced

No Mention or Commitment to Wholesale

Qwest **Strategic Growth Initiatives** US WEST

- Accelerate deployment of broadband access, Internet and hosting services out of region
- Aggressively grow in-region opportunities
  - High speed access (xDSL)
  - Long distance
  - Video / entertainment
  - Wireless
  - Integrated products and services
- Capitalize on national leadership in Internet-based applications and hosting

Source: July 19,1999 Merger Presentation
URL http://www.qwest.net/qwest/index.html

Qwest Acknowledges...

"Whether it's [US West's service problems] a real problem or a perceived problem, it needs to be addressed."

Joseph Nacchio, Qwest CEO
The Denver Post, Sept. 19, 1999

"I know that there are service issues. I know that there are also issues about local competition. It's our belief that Qwest's merger with US West will improve both of these issues."

Joseph Nacchio, Qwest CEO
The Denver Post, Sept. 28, 1999

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...US West's problems with quality

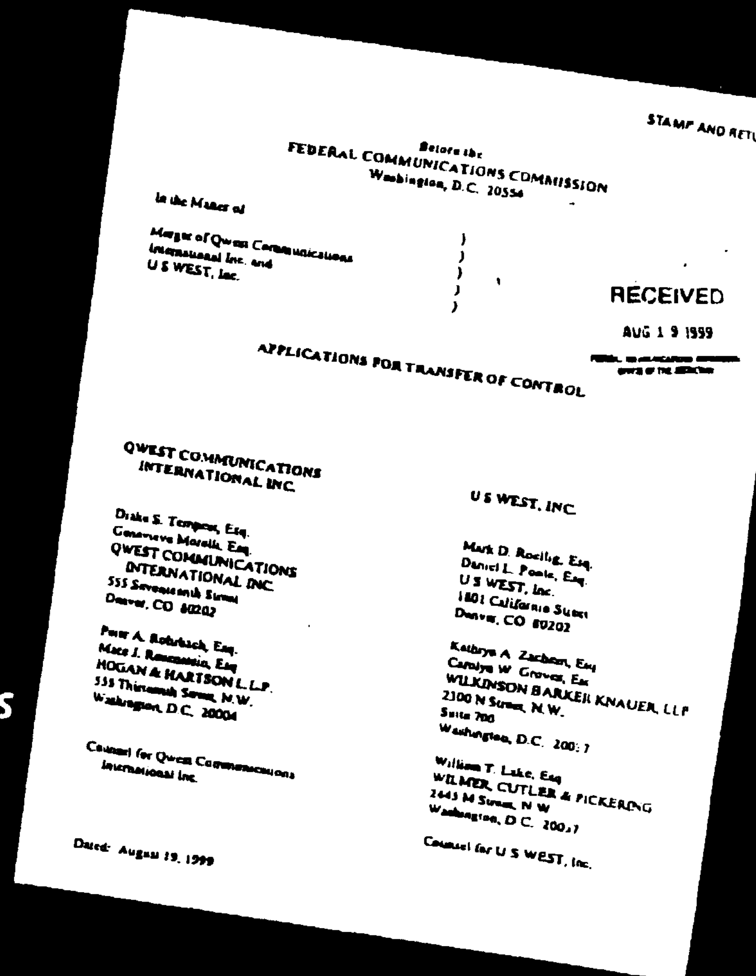
Qwest

"In order to comply with the Telecommunications Act of 1996 as of closing, Qwest plans to discontinue providing interLATA services it currently offers in US West's 14-state region. These services will be divested under separate agreements."

"Qwest will discontinue providing other in-region interLATA services, including in-region calling card services and prohibited 800 and private line services."

"Qwest is in the process of identifying affected services and making arrangements for third party carriers to assume those service obligations."

- Joint Application of Qwest & US West to FCC (filed 8/19/99)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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Merger of Qwest Communications International Inc. and U S WEST, Inc.

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APPLICATIONS FOR TRANSFER OF CONTROL

QWEST COMMUNICATIONS INTERNATIONAL INC.

Drake S. Tempest, Esq.
Genevieve Morelli, Esq.
QWEST COMMUNICATIONS INTERNATIONAL INC.
555 Seventeenth Street
Denver, CO 80202

Peter A. Rohrbach, Esq.
Mace J. Rosenstein, Esq.
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Counsel for Qwest Communications International Inc.

U S WEST, INC.

Mark D. Roellig, Esq.
Daniel L. Poole, Esq.
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1801 California Street
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Kathryn A. Zachem, Esq.
Carolyn W. Groves, Esq.
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William T. Lake, Esq.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 200[illegible]

Counsel for U S WEST, Inc.

Dated: August 19, 1999

McLeodUSA

...and Later Says Something Different...

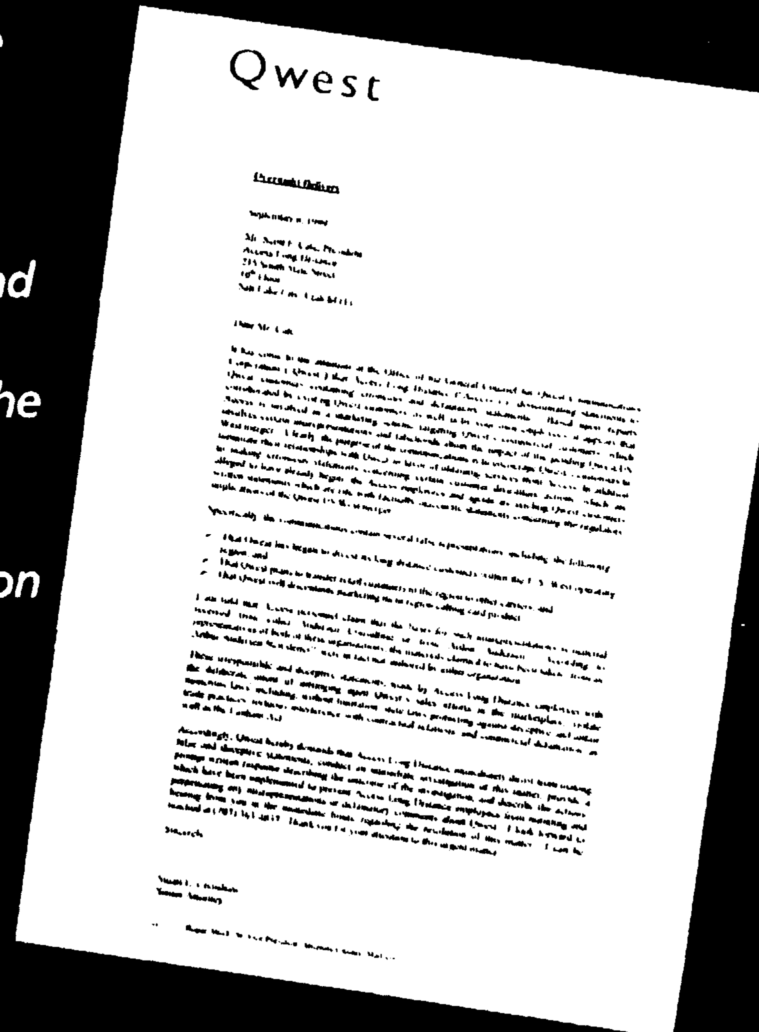
"Specifically, the communications contain several false representations, including the following:

- That Qwest has begun to divest its long distance customers within the US West operating region; and

- That Qwest plans to transfer retail customers in the region to other carriers; and

- That Qwest will discontinue marketing its in-region calling card product."

-Letter to McLeodUSA (fka Access Long Distance) from Stuart L. Crenshaw, Qwest Senior Attorney (9/6/99) alleging McLeodUSA made false statements to Qwest customers

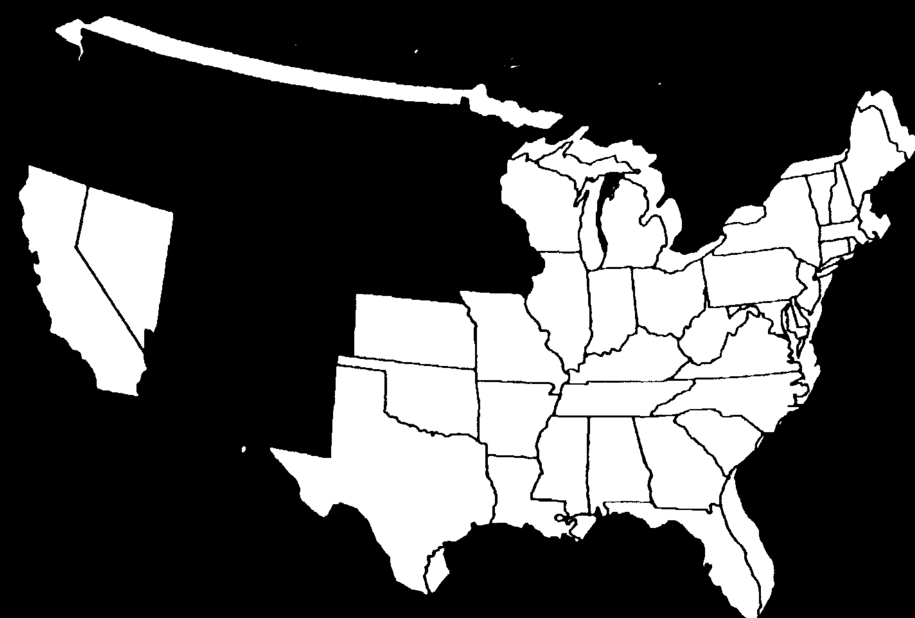


...to its competitors

McLeodUSA

In the End, Customers Lose...

- *Investment in large markets and national scope, not retail customers*
- *Declines in wholesale quality of service hurts our customers*
- *Delays in benefits of competition*
- *Confusion of customers*



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The Federal Communications Commission...

- *Retail and wholesale*
- *Foster competition (e.g. Pennsylvania split Bell Atlantic)*
- *Review the merger*
- *Impose pro-consumer and pro-competition conditions (e.g. SBC/Ameritech)*
- *Enforce conditions with fines and penalties*
- *Eliminate confusion*

McLeodUSA

...can, and should, protect consumers

McLeodUSA®