

revise the cited provision (§ 6.20) in the Stock Purchase Agreement to clarify their actual intentions. See Confidential Attachment D.

- *“If Qwest is the party identified as the party with primary responsibility for providing Customer Care Services to this Customer . . . Qwest will be the lead party in the delivery of Customer Care Services to the Common Existing Customers, including those relating to in-region, interLATA services, and will be the lead party for addressing issues in connection with the Services Contract for such customer.”* (p.7)
  - Qwest and Touch America have agreed to modify the cited provision of the Stock Purchase Agreement (§ 6.21(a)) to eliminate the elements mentioned by AT&T, and to make that provision more closely reflect the actual agreement of the parties. Qwest and Touch America are clarifying that each carrier is independently responsible for delivering customer care services with respect to the services that such carrier provides. See Confidential Attachment C.
- *“Qwest as the Primary Service Provider can amend, modify or supplement the Services Contract with the consent of Touch America, which cannot be unreasonably withheld.”* (p.8)
  - As noted above, Qwest and Touch America have agreed to amend this provision of the Stock Purchase Agreement to make explicit their intention that each of the carriers is free to renegotiate its respective service contract with customers. The only caveat is that when one of the carriers negotiates a contract change with a common, pre-divestiture customer, if the contract change could have a collateral effect on the services that the other carrier provides to that customer, then the contract change will be subject to that other carrier’s agreement, which may not be unreasonably withheld. Thus, Qwest cannot modify its contract for out-of-region services with a pre-divestiture customer in a way that would have collateral impacts on Touch America’s provision of in-region services to that customer unless Touch America consents, and vice versa. The purpose of this provision is to protect

the customer's interest in its pre-divestiture contract despite the split in its service arrangements to a two-carrier environment.

- *“Qwest will give its large national accounts the benefit of using its in-region usage to meet their out-of region long distance minimum volume commitments and/or realize higher volume discounts. These arrangements effectively allow Qwest to provide one-stop shopping to multi-region, national accounts for local, in-region and out of region long distance service . . .”* (p.8)
  - These arrangements apply only to pre-divestiture contracts of customers with in-region (now Touch America) and out-of-region (still Qwest) business. The arrangements will be available only for the one-to-two year term of the Transition Services Agreement, or the term of the pre-divestiture contracts, whichever is shorter. These merely allow Qwest and Touch America to ensure that pre-existing customers receive the benefit of their pre-existing bargains. They do not enable Qwest to provide “one-stop shopping” going forward, because these arrangements will not be available to new customers.
- *“In the example above, any calling cards issued to the Customer will be Qwest branded since Qwest is the Primary Service Provider.”*
  - AT&T again attempts to mislead the Commission by referring to an unusual fact situation – a pre-existing national customer with the majority of its business out-of-region – and implying that this “corner” case is the general case. It is not. Touch America branded cards will be issued to residential customers located in-region, business customers with only in-region service, and business customers with both in-region and out-of-region service but with a majority of service in region. Qwest-branded cards will be issued only to customers whose service is provided exclusively or primarily out-of-region; Touch America will provide in-region service to these customers, under its own brand name.

- *“Touch America must provide a rate table to Qwest at the beginning of each month so Qwest will have an opportunity to review them and to object.”* (p.9 n.26).
  - Qwest needs the Touch America rate table to perform its billing and collection obligations accurately. Qwest has no right to veto or have any control over Touch America’s pricing; to the contrary, the contract provides that “each party will have sole discretion to establishing its rates.” Calling Card Agreement § 1.2(a)(ii).
  
- *“Qwest will receive an advance copy of Touch America’s [prepaid card] rates and in light of Touch America’s contractual commitment to use commercially reasonable efforts to offer rates that are competitive in the marketplace could invoke that clause to alter Touch America’s in-Region rates for Qwest customers. Indeed Qwest can ask Touch America for variances as a result of negotiations with Distributors.”* (p.10)
  - AT&T’s assertions are wrong. To the contrary, Touch America controls the rates for both its own in-region prepaid card service and Qwest’s out-of-region prepaid card service. Prepaid Card Agreement, § 4.1(a) (referring to Touch America as “Company”). Touch America has “sole discretion with respect to establishing the rates,” and while Qwest may ask for Touch America’s consent to deviate from standard rate tables for particular distributors, Touch America has “sole discretion” whether or not to make such a change. § 4.2(b)&(c).
  - Qwest is taking comprehensive measures to comply with Section 271 and *AT&T v. Ameritech*, and in the unusual circumstances of the prepaid card arrangement, to avoid having any influence over Touch America’s in-region pricing. Because it is essentially impossible to have different rates for in-region and out-of-region calls on a prepaid card, Qwest is deferring to Touch America and allowing that company to have sole discretion not only over its own in-region rates, but also over Qwest’s out-of-region rates.

- *“Thus, it is apparent from these Agreements that all Qwest is divesting is the in-region interLATA transport itself. Indeed, the Stock Purchase Agreement narrowly defines “Transferred Services” and “Transferred Customers” to mean no more than “Transport (i.e., transmission) Services.”*
  - The definitions of "Transport Services," "Transferred Services," and "Transferred Services Rights" continue for 3 pages and include a detailed description of all the telecommunications services being divested.
  - It is unclear what else besides transport or transmission services AT&T thinks Qwest is supposed to be divesting. Section 3(21) of the Act defines “interLATA service” (which Section 271(a) prohibits BOCs from providing prematurely) as “telecommunications between a point located in a local access and transport area and a point located outside such area.” In turn, Section 3(43) defines “telecommunications” as “transmission, between or among points specified by the user, of information of the user’s choosing . . .” (Post-merger (and pre-271 relief), Qwest will not “provide” interLATA telecommunications, as the FCC has defined “provide” in *AT&T v. Ameritech*.)
- *“The only customers not defined in terms of transport are switched long distance customers with an in-region service address.” (p.11, n.36)*
  - This allegation is false. All service obligations to customers are being transferred to Touch America, not merely the transport of interLATA services.
- *“Qwest will retain all of its in-region fiber network and other facilities . . .” (p.11)*
  - Qwest is selling Touch America four strands of fiber on the Denver-to-El-Paso-to Brawley, California route, together with associated optronics. See IRU Agreement. Qwest is also selling Touch America eleven in-region packet switches and is offering access to the full functionality of four in-region circuit switches.

- However, AT&T's statement is true to a significant extent, and underscores the accuracy of the Commission's holding in the *Qwest-U S WEST Merger Order* that a major public interest benefit of the merger is to heighten the merged company's incentives to obtain Section 271 interLATA authority, given that it will own substantial in-region network assets that it will be largely unable to use. See *Qwest-U S WEST Merger Order*, ¶¶ 56-57.
- *"Qwest will have substantial control over pricing the in-region portion of the transport for "special products" . . . ." (p.11)*
  - This is false. Touch America has sole and exclusive control over the pricing of its services. See Calling Card Agreement, § 1.2(a)(ii); Prepaid Card Agreement, § 4.1(a)-(c); Layer One GSP Agreement, Exhibit A, § 3; Operator Services Agreement, Attachment SW, § 1.5(b).
- *"Qwest asserts that Touch America 'has no obligation to take any of these services.' . . . . While the Transition Services Agreement is terminable by Touch America alone on 30 days notice, Section 13.1.; the Stock Purchase Agreement, which e.g. requires coordination upon termination of the Transition Agreement, and governs the calculation and allocation of volume minima is not." (p.12 n.37)*
  - As noted above, the parties have modified the Stock Purchase Agreement to limit the scope of the provision requiring coordination upon termination of the Transition Services Agreement.
  - The parties have modified the other provision of the Stock Purchase Agreement mentioned by AT&T in a manner that conforms that provision more accurately to the parties' intentions. Specifically, the revised provision reflects the parties' intention that they will separately negotiate any new arrangements with the limited category of customers to which this provision applies – pre-divestiture common existing customers. The only narrow caveat is that one party may not renegotiate its arrangements with such customers in a way that affects other party's ability to deliver its own services to the customer without the consent of the other party, which may

not be unreasonably withheld. This ensures that both parties will be able to deliver their respective, contracted-for services to customers.

**AT&T I-B-2. “Joint Marketing and Coordinated Sourcing.”**

- *“Section 2(c) of the Bilateral Wholesale Agreement specifically refers to what appears to be a separate “Buyer Coordinated Marketing Agreement.” Such an agreement is not part of the documents produced in this proceeding.”*
  - At an earlier stage in the process, Qwest did consider entering into a coordinated marketing agreement of some to-be-negotiated scope, and the early drafts of some of the deal documents included references to such an agreement. In light of informal feedback from the Commission, and especially in light of the *Qwest-U S WEST Merger Order*, Qwest dropped the idea of entering a coordinated marketing agreement with the Buyer of the divested services. No such agreement exists.
  - The reference to a Marketing Agreement to which AT&T refers was left in the documents as an editing oversight; it should have been removed. Qwest and Touch America have agreed to remove this reference in the Bilateral Wholesale Agreement, as well as other, similar stray references that occur elsewhere in the documents (e.g., Stock Purchase Agreement § 1.2, Definitions, p.14, definition of “Transferred Services”).
- *“Even to the extent that marketing will be conducted by employees who have been assigned to Touch America, those transferred Sales Employees will apparently keep their current office space, working next to Qwest’s marketing employees.”* (p.13)
  - The sales employees transferred to Touch America will not be “working next to Qwest’s marketing employees” because Touch America will be hiring all marketing employees working in the Qwest office space that it is acquiring. Any employees working in those offices who remain with Qwest will be moved out of such space.

- Specifically, Touch America will be hiring Qwest sales employees located in the Phoenix, Tucson, Minneapolis, Portland, Salt Lake City, Seattle, Denver, and Omaha metropolitan areas.
  - » In Phoenix, Tucson, Minneapolis, and Portland, Touch America will acquire the Qwest office space (through subleases or assignment of the existing leases) and will be offering employment to all Qwest employees working in those offices.
  - » In Salt Lake City and Seattle, Touch America will acquire the Qwest office space and will be offering employment to all but a handful of Qwest employees in the offices. Those employees remaining with Qwest will be moved to U S WEST or other available office space in those cities.
  - » In Denver and Omaha, Touch America will be acquiring its own office space.
- *“Without adequate ‘firewalls’ (of which there are none) these employees can, and in light of the other obligations to coordinate with respect to MAST and Common Existing Customers accounts likely will, coordinate marketing and sourcing.”*
  - Qwest described the “firewalls” in its information systems to ensure that the sales staffs and customer service representatives of Qwest have no access to information regarding services provided by Touch America, and vice versa, in the Divestiture Compliance Report (at 41-42).

**AT&T I-B-3. “Qwest’s Ability to Re-Acquire Divested Businesses.”**

- *“[The] Agreements are structured to ensure that Customer retention by Touch America will be unlikely. First, the Agreements restrict[] Touch America’s right to sell the business to other parties who might be better able to provide in-region service without any support from Qwest. . . . [T]here is an ironclad covenant against resale of the business for the first six months. A “Change of Control” of Touch America at any time is also the basis for the termination of other Agreements. . . .”*

- There is no restriction on Touch America's being sold to a competing carrier after the end of the six-month period. If a large national carrier were to purchase Touch America, it is unlikely that it would want to buy support services or wholesale service from Qwest – but if it wanted to do so, Qwest would be willing to discuss it. The Agreements only provide that Qwest has the right to terminate upon a Change of Control; they do not require termination.
- Restricting Touch America from “flipping” the company within a short time period increases the likelihood of customer retention. This is relevant to Qwest because the purchase price under the Stock Purchase Agreement can be reduced if Touch America does not receive the customer accounts it is purchasing due to immediate attrition.
- *“Further, there is a non-compete obligation on Touch America, as Buyer of in-region services and assets, on its provision of out-of-region services for three years after divestiture. The non-compete precludes Touch America from providing out-of-region services to Transferred in-region Customers. This makes Touch America a very unattractive long term provider for Transferred Commercial and Wholesale Customers because it cannot provide a bundled service. There is no legitimate business justification for imposing this non-compete on the Buyer – it is no more than a “naked” restraint of trade.”*
- AT&T mischaracterizes the scope of the non-compete agreement. Unlike the non-compete agreement binding Qwest, which restricts Qwest from soliciting any in-region interLATA business of transferred customers for a three-year period, Touch America is subject to a much narrower non-compete.
- Touch America may immediately compete out-of-region to serve any customer not currently served by Qwest. Given Qwest's overall national market share of less than 3% (1998 data), this constitutes the vast majority of customers. In addition, there are no restrictions on Touch America's ability to compete to serve wholesale transport customers or to serve its own

pre-existing customers. Touch America is free, immediately, to provide “bundled service” (in-region and out-of-region) to all wholesale customers, and to all business customers other than Transferred Customers.

- The only restriction on Touch America relates to the existing out-of-region business of the very limited group of customers whose in-region business is being transferred from Qwest to Touch America. Touch America may not solicit the existing business currently provided by Qwest to common customers for a three-year period, and it may not solicit other out-of-region interLATA business from these common pre-divestiture Qwest customers for a one-year period.
- By contrast, Qwest is subject to much broader non-compete obligations. Even assuming Qwest/U S WEST obtains interLATA relief that contractual commitment restricts Qwest, for a three-year period, from competing with Touch America in providing *any* in-region interLATA services to Transferred Customers.
- Both Qwest’s and Touch America’s non-compete responsibilities are closely tied to the scope of the agreement between the parties and last for a reasonably limited period of time. Specifically, in the context of this sale of Qwest’s in-region business, these non-compete provisions merely ensure that Qwest does not try to recapture the business it has sold to Touch America, and that Touch America does not, by virtue of its in-region relationship with certain of Qwest’s existing customers, try to lure away Qwest’s existing out-of-region business with those specific customers. Such

a limited-term non-compete is commonplace in the sale of businesses and clearly consistent with established antitrust law. 2/

- *“Under these circumstances, Qwest is receiving material benefits from Touch America’s provision of in-region transport under its brand (particularly when Qwest is the primary service provider.” (p.15)*
  - This is false. Qwest has made it very clear that Touch America will never provide in-region transport under Qwest’s brand. (The primary service provider concept has no relevance beyond whose name appears on the top of an invoice, but the invoice will identify clearly and explicitly which carrier provides which service, as required under the Truth in Billing rules.)
- *“By providing all of the support services described above, Qwest is holding itself out as a provider of long distance services and is engaging in activities typical of resellers.” (p.15)*
  - “Holding out” implies that Qwest will be communicating to the public that Qwest is offering in-region services under its own brand. But in fact, Qwest will be communicating the opposite message.

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2/ “Covenants not to compete often appear . . . in contracts for the sale of a business. In these contexts such covenants do not violate Section 1 [of the Sherman Act] so long as they are ancillary to a significant lawful business purpose of the contract and are reasonably limited in scope to protecting the covenantee’s legitimate interest. . . . With respect to the first requirement, the temporary loss of competition due to a covenant not to compete is considered ancillary to the sale of a business where it is necessary to protect the purchaser in his enjoyment of the fruits of his purchase of the business and its goodwill.” ABA Section of Antitrust Law, Antitrust Law Developments, vol. 1 at 124-25 (4th ed. 1997); *see also* cases cited therein.

- *“And Qwest is the “one stop” source for existing customers to go to in order to obtain in-region and out-of-region long distance services, and if an in-region customer, local services as well.” (p.15)*
  - There is no support for this allegation. No customers – whether new customers or existing customers – will be able to order in-region long distance service from Qwest (including service provided by Touch America). They will have to place separate calls to Qwest customer service (for in-region service) and to the customer service of their in-region IXC of choice (whether Touch America or someone else).
  - The personnel who Qwest will detail to Touch America (for hire and for no longer than six months) will answer a separate toll-free number and will not have access to data relating to services provided by Qwest. See Divestiture Compliance Report at 35-37. This six-month transitional accommodation does not present 271 concerns.

**AT&T I-C. “The Applicants Claim That the Proposed Divestiture of In-Region InterLATA Transport Eliminates The Violation of Section 271 is Without Merit.”**

- *“[T]he Commission made it clear that the provision of support services other than billing and collection would lead to heightened scrutiny, and that the amalgamation of all the services described herein will clearly violate Section 271. Applicants have ignored these prior holdings . . . .” (p.15)*
  - AT&T misrepresents the Commission’s holding in the Qwest-U S WEST Merger Order, but in any case Qwest will not be providing all of the services listed in the original divestiture plan.
    - » For example, Qwest will not provide “customer care,” as described in the original divestiture plan, at all. It is only detailing trained customer service representatives for six months, a very limited time period, to Touch America for provision of service to a minority of the transferred customers.

- » Qwest is not providing network monitoring and maintenance at all in the manner contemplated by the original divestiture plan. It is merely providing support for certain specific network assets that it is making available for Touch America's use (e.g., the four in-region circuit switches).
  - » The original divestiture plan was not specific about any time limits that would apply to support services. By contrast, the services being offered here are for very limited time periods – either six months or one year in most cases.
- “[T]he support services provided for in the Stock Purchase Agreement . . . may be binding on Touch America for an even longer period of time [than the duration of the Transition Services Agreement.]” (p.16)
    - The support services are provided for in the Transition Services Agreement, not the Stock Purchase Agreement. As noted above, the Transition Services Agreement accurately represents the parties' intentions with respect to support services, and the parties have modified the Stock Purchase Agreement accordingly.
  - “The Applicants further claim that their continued provision of such services for calling cards, prepaid cards, Internet services and operator services . . . does not violate Section 271 because of the distinctive nature of these products and/or Commission or MFJ precedent is similarly without merit. In fact, there is nothing to distinguish these services from the other switched and dedicated services, other than an effort by Qwest to misapply MFJ and Commission precedent in an effort to continue to provide in-region calling card (pre- and post-paid) services.” (pp.16-17)
    - AT&T subtly and misleadingly conflates the *support services* that Qwest will be providing to Touch America with the *telecommunications services*, such as in-region calling card (pre- and post-paid) that Touch America will be providing to consumers. To be perfectly clear – Qwest has never argued that it can provide in-region interLATA calling card, prepaid card, GSP, or operator telecommunications services due to the “distinctive nature of these

products.” But we do maintain that provision of the *support services* associated with these products, as described in detail in the Divestiture Report, is consistent with Section 271.

- “*Qwest does not even attempt to explain why Internet services are ‘special’ (other than it is a rapidly expanding service sector) and the Commission’s prior denial of a Section 706 waiver to U S WEST to provide such services makes it very clear that they are not ‘special’ in terms of Section 271.*” (p.17)
  - AT&T’s argument makes it clear that it has misunderstood the GSP model. Unlike U S WEST’s Section 706 waiver petition, what Qwest proposes here is not the right to provide in-region interLATA transmission notwithstanding Section 271. The point is that only Touch America, not Qwest, will provide in-region interLATA transmission in connection with Qwest’s Internet offerings.
- “*Qwest gains indirect benefits through the promotion of the ‘Qwest’ brand in connection with the in-region interLATA service.*” (p.17)
  - The Qwest brand will not be associated with the in-region interLATA services provided by Touch America.
  - AT&T cites in this connection the *AT&T v. Ameritech* order, but it is instructive to contrast the facts in that case with the facts at issue here. In the *AT&T v. Ameritech* case, Ameritech and U S WEST placed their brand names on an in-region interLATA service and offered it to the public as part of a bundled one-stop package with local exchange service, with a single, BOC-branded customer service number.
  - By contrast, here, Touch America’s name is the only name that will appear on in-region service. In-region service will appear in a “package” with out-of-region service provided by Qwest *only* to pre-existing customers, to the extent necessary to fulfill those customers’ contractual expectations. And even then, the parties will go to significant lengths to ensure that the

separate carriers' names appear on the separate services they provide, and that separate customer service numbers will be used.

- *“Qwest also directly obtains a portion of that revenue under the Bilateral Wholesale Agreement because calls originating in-region are to be switched to Qwest’s (and not Touch America’s or if Touch America does not have a presence there another IXC with a more competitive rate) network for out-of-region transport.”* (p.17 n.52)
  - AT&T mischaracterizes the Bilateral Wholesale Agreement. Under that agreement, Touch America has no commitment to purchase service from Qwest. It is free to build its own network or buy service from “another IXC with a more competitive rate,” to use AT&T’s words. The Bilateral Wholesale Agreement merely provides the prices, terms, and conditions under which Qwest and Touch America will make capacity available to one another, if desired.
  - By providing this service, Qwest does not “obtain a portion” of Touch America’s in-region revenue; it merely offers a competitive, 271-permitted, out-of-region service to an independent carrier. As the Commission recognized in the *Qwest-U S WEST Merger Order* (¶ 44), “the 1996 Act expanded the range of permissible activities in which BOCs could engage, including the provision of out-of-region services.” *See also* 47 U.S.C. § 271(b)(2).
- *[Qwest’s argument] “ignores the fact that as a result of these arrangements, Qwest will be the single source of support services for local and all long distance services in and out of region for the most valuable customers, creating ‘the perception of Qwest as offering “one-stop shopping” to customers.’ ”* (p.18)
  - Qwest will be the single source of *nothing* under these arrangements. Touch America is perfectly free to stop taking support services from Qwest and instead, to buy them from another vendor. Qwest has absolutely no monopoly or market power over any of the support services at issue here.

- For six months, Qwest will be lending (for hire) customer service personnel to Touch America to serve certain customers. There is no basis for AT&T's characterization of this limited support service as Qwest becoming a single source of supply for local and all long distance services with respect to these customers.
- The arrangements are designed to avoid creating any incorrect customer perceptions, by ensuring that the message is consistently communicated that *only* Touch America provides in-region interLATA service.
  - » For example, customers calling into Touch America's customer service toll-free numbers will hear *only* Touch America's brand name. They will have no reason to think that Qwest has anything to do with these services.
- *"The Applicants also claim that Touch America will always perform the core functions of carriers including determining its own rates, making its own decisions about marketing and promotions, setting its own policies about sales agents and other distribution channels, and retaining ultimate control over its own network facilities. But these claims are no more valid or persuasive here than when they were made in support of the arrangement rejected by the Commission in the Qwest Order." (p.19)*
  - The difference is that all the factors cited above are truly present here, and all of them were absent in the *AT&T v. Ameritech* situation. In that case, the Commission found the following facts, *none* of which are present here:
    - » The BOCs had the *exclusive* right to market the interLATA products at issue, under their own ILEC brand names, in conjunction with their own monopoly local exchange offerings, 13 FCC Rcd at 21470, ¶ 45;
    - » In communications with customers, the BOCs characterized themselves as the providers of the interLATA long distance service, *id.*;

- » The BOCs served as the initial point of contact for *all* customer inquiries, *id.*;
  - » The BOCs, not the IXC, “established the prices and terms for the long distance services” and “exercise[d] strong prospective influence over the prices, terms, and conditions of the long distance services provided.” *Id.*, 13 FCC Rcd at 21472, ¶¶ 46, 47.
- “*Qwest’s [sic] discretion to set the rates for some of the special products is circumscribed.*” p.19
    - Presumably, AT&T intended to refer to Touch America’s discretion to set its rates. As noted above, Touch America has sole and exclusive control over such pricing. See Calling Card Agreement, § 1.2(a)(ii); Prepaid Card Agreement, § 4.1(a)-(c); Layer One GSP Agreement, Exhibit A, § 3; Operator Services Agreement, Attachment SW, § 1.5(b).
  - “*The Applicants also argue that the support services will be limited to the types of services that interexchange carriers typically out-source . . . . But this “outsourcing” test has no basis in law, nor is it at all consistent with the Commission’s holding in the Qwest-U S WEST Merger Order.*” (p.20)
    - One of the major issues in the *AT&T v. Ameritech* decision was that the BOCs performed various functions and activities that are typically performed by those who resell interLATA services, such as marketing . . . and establishing the prices, terms, and other conditions for the long distance services . . . .” 13 FCC Rcd at 21466, ¶ 38. By contrast, in this case, Qwest has shown that it will provide functions and activities that are typically performed *not* by IXCs themselves, but by outside contractors.
  - “*Appellants [sic] claim that it ‘intends’ to discuss possible joint marketing arrangements with carriers other than Touch America, but a similar claim was deemed insufficient in the Qwest Order proceeding [i.e., AT&T v. Ameritech].*” (p.20)

- To the contrary, in that order the Commission specifically stated, “we believe that the 1996 Act contemplates that certain business arrangements between BOCs and non-affiliated long distance entities, that may include some marketing dimension, would be permissible.” 13 FCC Rcd at 21474, n.168.
- *“The Applicants claim that all in-region marketing staff is being transferred to Touch America . . . ignores the fact that the transferred Sales Employees will apparently keep their current office space . . . .”* (p.20)
  - As noted above, no Qwest sales employees will be collocated with the sales employees transferred to Touch America.
- *“It also ignores the specific references in the Bilateral Wholesale Agreement to a Buyer Marketing Agreement (not provided to the Commission) . . . .”* (p.20)
  - The Bilateral Wholesale Agreement has been amended to eliminate those erroneous references to a document that does not, and never did, exist.
- *“Qwest will coordinate its out-of-region service with its in-region local service. Qwest will then coordinate with Touch America the in-region long distance with its other offerings – in-region local and out of region long distance. Thus, Qwest will be, and will be perceived as, the only source of one stop shopping in the region.”* (p.21)
  - There is no basis for this incorrect allegation. Qwest will not engage in such coordination. As noted above, there will be no one-stop shopping because the provisions for coordination between Touch America in-region and Qwest out-of-region (not local) apply only to pre-existing Qwest customers for the remaining duration of their contracts, and will not be available to new customers.
- *“That exception [regarding permissible marketing] is plainly inapplicable where, as here, Qwest’s brand is prominently displayed on the invoices for Common Existing Customers’ and national accounts’ in-region interLATA service.”* (p.21)
  - The invoices described by AT&T are irrelevant to the marketing issue, because these invoices with both Qwest and Touch America services will be

available only to Common Existing Customers (*i.e.*, pre-divestiture Qwest customers) and not to any new customers, whether national accounts or others. Moreover, on these invoices, only Touch America's brand, not Qwest's, will be associated with the specific in-region services provided by Touch America.

- *"The Applicants' claim that 'BOC provision of calling cards that facilitates access to in-region long distance was upheld long ago under the MFJ' misreads that precedent."* (p.21)
  - While the calling card arrangements contemplated here are not precisely identical to those that were addressed in the MFJ, the analogy remains apt. AT&T's lengthy footnote on this point fails to address Qwest's showing that the calling card arrangement is fully consistent with *AT&T v. Ameritech*. See Divestiture Report at 55-57 & n.82. Moreover, in that same lengthy footnote, AT&T does not dispute that the calling card arrangement here is directly supported by the Common Carrier Bureau's decision in *AT&T v. BellSouth*. See *id.* AT&T may disagree with that decision, but the case remains a valid, binding precedent, on which Qwest is entitled to rely.

#### **AT&T II: "The Provision of Internet Services, Even With a GSP Agreement, Violates Section 271"**

- *"For \$10 consideration, Touch America 'shall provide in-region users with interLATA carriage to Qwest's Internet backbone."* (p.24)
  - The \$10 consideration is a legalistic contract formality. Touch America receives substantial consideration for the provision of GSP service to end users – the payments it receives from end users for the service.
- *"And for approximately 2,600 customers in region to whom Qwest provides dial-up . . . Internet access services by Concentric, although that GSP contract, if there is one, is not provided."* (p.24)

- The GSP contract with Concentric is still under negotiation. Qwest expects to conclude the negotiations within the next week and will submit the contract for the record in this proceeding if Commission staff so request.
- *“There is no information service separate and apart from the interLATA transmission service.”* (p.29)
  - This is false. Qwest’s Internet services include dial-up and dedicated Internet access provided directly to end-users, Internet access provided to other ISPs for resale to their customers, web hosting, and other services. Each of these services include information service components and transmission components. Qwest uses its Internet backbone transmission *facilities* in various parts of the country – but not in the U S WEST region post-merger – to provide various services, but it does not offer a service called “Internet backbone service.” AT&T’s characterization is thus incorrect.
- *“Qwest controls the pricing of the Internet offering.”* (p.33)
  - The agreement between Qwest and Touch America provides that Touch America, as GSP, “shall have absolute discretion to establish pricing for the GSP Services” provided to end users. Layer One Global Service Provider Agreement, Exh. A, § 3.
  - The only caveat is that Touch America may not increase its rates during the first year of the term, and thereafter, may increase its rates no more frequently than once per year with at least six months prior written notice to Qwest. *Id.* These restrictions simply assure that Touch America will not abuse its position as GSP to the detriment of Qwest’s Internet customers.

# **ATTACHMENT B**



Touch America

*The Montana Power Telephone Company*

RELEASE EMBARGOED UNTIL 12:01 A.M. EST March 16, 2000

**QWEST COMMUNICATIONS TO DIVEST LONG DISTANCE BUSINESS  
IN U S WEST TERRITORY UPON CLOSING OF MERGER LATER THIS YEAR**

*Touch America buys business for approximately \$200 million*

**March 16, 2000** — Qwest Communications International Inc. (NYSE: Q), the broadband Internet communications company, today announced the forthcoming sale of its long distance and related business, including certain physical assets, in the 14-state U S WEST territory to Touch America, the telecommunications subsidiary of The Montana Power Co. (NYSE: MTP), for approximately \$200 million.

The sale will be completed when Qwest closes its merger with U S WEST, expected later this year. The divestiture is required by federal law to comply with restrictions that currently prohibit regional bell operating companies or their affiliates from providing long distance services in their local service region.

"We are pleased that Touch America is acquiring this business from us," said Joseph P. Nacchio, chairman and CEO of Qwest. "Touch America is an experienced carrier with a national fiber network and the same high commitment to service that our customers are accustomed to receiving from Qwest today."

"This milestone acquisition fits well with our strategy to add customers, sales force and increase revenues on Touch America's rapidly expanding national fiber-optic network," said Robert P. Gannon, Chairman and CEO, Montana Power/Touch America. "The service area is a part of the country we know well, as we have had infrastructure in place for some years that matches much of the service region Qwest is divesting. We look forward to providing our new customers the same superior service that we have been offering others for the past 16 years."

Under terms of the transaction, Qwest will sell Touch America its in-region business, including 1+, and related wholesale and private line services. These services are sold to about 250,000 customers and generate revenues of approximately \$300 million annually. In addition, Touch America will purchase certain physical assets and will offer

employment to Qwest's sales agents in the 14-state region. The sale is subject to the receipt of regulatory approvals and other customary closing conditions.

Qwest is not divesting its interLATA business outside the U S WEST region, so customers in those parts of the country are not affected by this transaction. Qwest can reenter the long distance market in the 14 U S WEST states once it has satisfied certain requirements in the Telecommunications Act of 1996.

#### **About Touch America**

Touch America is wholly owned telecommunications subsidiary of the Montana Power Company, providing long-distance services, private-line services, Internet, wireless and business telephone equipment since 1983. The company's fiber-optic network employs the most advanced telecommunications technology available today. Touch America offers a full line of dedicated voice, data and video services and frame relay solutions. Touch America's equipment services include design, installation and maintenance of PBX and key systems. The company also offers construction management oversight of the installation of fiber-optic systems. Touch America and the Montana Power Company are based in Butte, Montana. Information about Touch America can be found at <http://www.mtpower.com> or [www.in-tch.com](http://www.in-tch.com).

#### **About Qwest**

Qwest Communications International Inc. (NYSE: Q) is a leader in reliable, scalable and secure broadband Internet-based data, voice and image communications for businesses and consumers. The Qwest Macro Capacity® Fiber Network, designed with the newest optical networking equipment for speed and efficiency, spans more than 25,500 miles in North America. In addition, KPNQwest (Nasdaq: KQIP), Qwest's European joint venture with KPN, the Dutch telecommunications company, is building and will operate a high-capacity European fiber optic, Internet-based network that will span 11,800 miles when it is completed in 2001. For more information, please visit the Qwest web site at [www.qwest.com](http://www.qwest.com).

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This release may contain forward-looking statements that involve risks and uncertainties. These cautionary statements are included to make applicable and to take advantage of the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995 for any forward looking statements

made. These statements may differ materially from actual future events or results. Readers are referred to the documents filed by Qwest and Montana Power with the SEC, specifically the most recent reports which identify some or all of the important risk factors that could cause actual results to differ from those contained in the forward-looking statements, including potential fluctuations in quarterly results, dependence on new product development, rapid technological and market change, failure to maintain rights of way, financial risk management and future growth subject to risks, Qwest's ability to achieve Year 2000 compliance, and adverse changes in the regulatory or legislative environment. This release may include analysts' estimates and other information prepared by third parties, for which Qwest and Montana Power assume no responsibility. Qwest and Montana Power undertake no obligation to review or confirm analysts' expectations or estimates or to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

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**CERTIFICATE OF SERVICE**

I, Barbara E. Clocker, hereby certify that on this 12th day of May, 2000, copies of the foregoing "Qwest Reply to AT&T Comments on the Divestiture Compliance Report" were served by hand delivery (where indicated) or by first class mail to the following:

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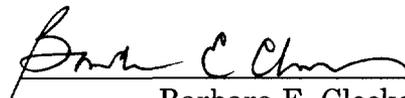
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