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October 29, 2001

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## HAND DELIVERED VIA COURIER

Dorothy Attwood  
Chief, Common Carrier Bureau  
David Solomon  
Chief, Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554

**Re: Qwest Communications International – Reports of Independent Public Accountants, Statement of Management Assertions, and Executive Certification of Compliance, CC Docket No. 99-272.**

Dear Ms. Attwood and Mr. Solomon:

Touch America, Inc. ("TA"), through its attorneys, hereby submits its comments on the initial Report of Independent Public Accounts filed April 16, 2001, and the follow-up reports of June 6, 2001 and September 7, 2001. TA delayed these comments because it had entered into good faith negotiations with Qwest regarding some of the issues raised herein. Qwest unilaterally terminated these negotiations in early August, mandating that TA submit these comments.

The issues TA raises herein highlight generally apparent conflicts between Qwest's behavior and the obligations imposed on Qwest as a result of the Commission's decisions regarding its merger with US WEST. In addition to identifying these numerous conflicts and Qwest's failures to adhere both to the letter and spirit of the Commission's Merger and Divestiture Orders, and Section 271 of the Telecommunications Act of 1996 ("the Act"), generally, since its merger with US WEST on June 30, 2000, through these comments TA urges the Commission to reexamine Qwest's compliance for the time period in question.

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Also, the Commission should use these comments to devise standards to guide future compliance audits.

### **Background**

Some short time prior to filing the initial report on April 16, 2001, Arthur Andersen LLP (“AA”) contacted TA about the FCC audit report it was intending to file. While it knew that the FCC had required an audit, TA expressed its surprise that an audit had been conducted because neither AA nor Qwest contacted it in regard to the compliance audit. TA then raised several concerns about Qwest’s compliance not only with the FCC’s Merger and Divestiture Orders, but also with Section 271. AA responded by informing TA that the scope of the audit did not require AA to obtain input from TA to be included in the audit reports. AA personnel further informed TA that it had no obligation to consider TA’s comments or concerns offered on a voluntary basis. Apparently, based on AA’s views of its obligations in conducting the audit, and in spite of the unique involvement of TA in the divestiture’s implementation, TA’s knowledge and experience were considered by AA to be irrelevant. AA refused to incorporate any information or concerns of TA into its audit reports to the FCC.

As a result, TA was relegated to that of a functionary with no other role in the audit process than to sign a representation letter. TA refused to sign the letter at first because of its concerns. It then decided that simply refusing to sign the representation letter would have minimal affect because there was no forum in which to air the reasons underlying that refusal. Hence, as a first step, TA decided to document its concerns to AA in a cover letter dated April 17, 2001. **See Attachment 1.**

### **Overview**

Only by reviewing the totality of Qwest’s performance against what it represented to the Commission in the Divestiture Compliance Report and against what the Commission expected to be accomplished as summarized in its Merger and Divestiture Orders, will the Commission be able to determine whether Qwest is complying with the FCC’s Orders or whether Qwest is behaving in a manner that gives it an unfair advantage in the marketplace when and if it receives 271 relief. Based on the AA audit report, TA concludes that the audit’s scope did not cause AA to look at Qwest’s compliance broadly or in depth. As such, the audit report does not reflect an accurate ‘snapshot’ of Qwest’s behavior. Despite the superficial and limited analysis undertaken, AA still uncovered irregularities.

In the following comments, TA highlights the need to expand the scope and integrity of future audits and the need to supplement the existing audit report through additional scrutiny of Qwest’s compliance from July 1, 2000 through December 31, 2001.

### **Customer-Affecting Interference and Non-Performance**

In its Divestiture Plan, Qwest made an express commitment that it would “minimize the impact [of the divestiture] on affected customers” (Divestiture Compliance Report, CC Docket No. 99-272, p. 1). To the contrary, Qwest’s implementation of the Divestiture has exacerbated

the impact on affected customers and interfered with, and in some cases prevented, TA from providing affected customers with high quality service.

### **Frustrating Access to Information**

During the transition period following divestiture, Qwest used its control over its database systems (partial access to which was licensed to TA) to gain unauthorized access to TA's portion of these databases. It then used this access to alter orders, to view customer information, and to give itself credits on its own accounts without TA's consent or knowledge.

In addition, Qwest's ability to prevent TA from gaining access to necessary customer, circuit, and switch information directly impacts both customers and TA. Since divestiture, Qwest's concerted actions aimed at frustrating TA's ability to access such information has resulted in delays in provisioning services to Transferred Customers. The cause of these delays in the customer's mind often times is attributable to TA because Qwest's interference is conducted behind the scenes and outside the customer's view.

### **Improper Billing**

TA is also concerned that many customers have not been receiving proper bills. Again, from the customer's perspective, this appears to be a problem caused by TA, when in reality, if it occurs it is entirely due to Qwest. As a result, TA has experienced customer wrath and loss of customer goodwill, understated revenues, and unnecessary costs. All of which, when combined with Qwest's refusal to pay TA for services TA provides to Qwest and Qwest's retaliatory activities related to TA's dispute of certain Qwest bills to TA, undermines TA as a competitor to Qwest, when and if Qwest obtains 271 relief in the 14-state region.

### **Warehousing Customers**

TA wrote AA on April 17, 2001 informing it of its concerns that Qwest was divesting its interests in such a way as to maintain a competitive advantage in recapturing Transferred Customers, once Qwest attained 271 clearance. It further pointed out that the combination of Qwest's actions have the effect of undermining TA in the eyes of its customers and therefore of eroding TA's viability as a strong competitor to Qwest in-region. These actions will place Qwest in a dominant position to recapture customers transferred to TA.

### **Provisioning InterLATA Services in Violation of Section 271**

In addition to these matters, TA has documentation that substantiates what AA itself suggests in its own initial audit report, i.e., that Qwest is continuing to provide in-region communications service. Because the AA conducted an audit of only a "sampling" of accounts, based on information available to TA, AA did not identify much of the in-region interLATA traffic that Qwest carried throughout the audit period and continues to carry to this day.

## SPECIFIC CONCERNS AND RECOMMENDED ACTIONS

### **I. Initial Audit**

- The initial AA audit report identified certain accounts from which TA should have received revenues, but has not.
- Once these accounts were identified by AA and reported to the Commission, Qwest remitted related revenues to TA.
- However, despite TA's specific requests, to date Qwest has refused to provide TA with any information regarding the affected customers and how their accounts were credited, etc.

#### **RECOMMENDED FCC ACTIONS:**

- TA requests that the Commission require Qwest to provide TA with the information regarding these revenues and associated customers accounts.

### **II. Follow-Up Report**

#### **A. Corporate Communications and IRUs**

- In both AA's June 6, 2001 follow-up report and Qwest's certification and statement in response to AA's initial audit, the discussion of "corporate communications" discloses Qwest's involvement in providing in-region interLATA services.
- In the follow-up report, AA includes a reference to IRU customers.
- In Qwest's certification and statement, it responds to AA's finding of variances in service component codes (these variances are indicative of the fact that Qwest was providing prohibited interLATA services) by declaring "several of these customers had in-region interLATA codes that were properly assigned, because the components represented corporate communications for Qwest (which Qwest is permitted to provide itself)."
- In Finding #2 of AA's June 6 report, it is reported that "upon further investigation," AA "found that 11 account records had in-region interLATA codes that were assigned to Qwest because the components represented corporate communications for Qwest (which Qwest believes it is permitted to provide to itself) or indefeasible rights of use ("IRU") transactions."
- AA stated that it could not comment on the legality of Qwest's assertions.

#### **RECOMMENDED FCC ACTIONS:**

- Presently, both AA and the Commission take Qwest at its word that certain traffic is permissible under the general headings, "corporate communications" and "IRUs." TA has evidence that refutes these assertions.
- TA urges the Commission to conduct a review of the traffic that Qwest designates as "corporate communications" and its assertion that provisioning of in-region, interLATA IRUs is lawful.

## **B. Finding # 4**

- In Finding #4 of its June 6, 2001 follow-up report, AA states that, “TA provisioned all in-region interLATA switched services after June 30, 2000.” This statement is incorrect because, pursuant to the Transition Services Agreement and other agreements between TA and Qwest, Qwest provisioned services for TA through December 31, 2000.
- AA bases its determination on a review of invoices processed by Qwest’s billing systems. *See* AA further statement that, “other safeguards in the Qwest billing system examined the originating ANI of each call and ensured that such calls were billed in TA’s name and its rates regardless of the component call.”
- While the safeguard referenced may exist in the Qwest billing system, AA failed to look at the entire call path before drawing its conclusion.
- Because the billing system is only the final part of the entire process (i.e., from call origination to transport, termination, and billing), errors made prior to entry into the Qwest billing system will not be discovered simply through a review of the billing system.

### **RECOMMENDED FCC ACTIONS:**

- In order to audit a call thoroughly, an auditor must trace the complete call path, from the customer origination to the billing system.
- For switched traffic, this requires that the routing at the voice switches be monitored and verified.
- TA submits the Commission must require that any future auditor thoroughly investigate call paths to determine whether or not the calls have been properly routed and billed.

## **III. Access to Information**

### Background

- Pursuant to the Stock Purchase Agreement and related divestiture agreements approved by the Commission in its Order on Divestiture, TA relies on access to numerous Qwest data systems for any and all information regarding Transferred Customers (including Qwest, as a TA customer), Transferred Services, and all Internet transport customers, i.e., Global Service Provider (“GSP”) customers.
- TA relies on Qwest data systems for billing, circuit, traffic and customer care information.
- Qwest controls 100% of the access to these data systems.
- TA has no access other than that arranged for and provided by Qwest and therefore there is no way to verify that TA has been given the access it requires.

### **A. Access to CPNI**

#### Problem

- Qwest has exploited TA’s dependence on Qwest systems for access to: (1) customer proprietary network information (“CPNI”); (2) revenues it purchased from Qwest; (3) assets

obtained from Qwest; (4) and about the obligations it assumed from Qwest regarding Transferred Services.

- Since June 30, 2000, Qwest has either hindered, delayed or refused TA's access to information regarding Transferred Customers, in particular regard to Common Existing Customers ("CECs"), i.e., the customers with in-region and out-of-region services that TA shares with Qwest.
- To adequately and timely address questions from CECs regarding TA's provisioning of their in-region service, TA needs access to historical CPNI on these customers, information TA purchased with hard dollars.
- When TA requested CPNI for CECs, Qwest refused to provide the information claiming that the agreements between Qwest and TA did not require it to do so.
- Ultimately, although Qwest agreed to provide six months of adjustment and trouble ticket history for CECs, Qwest's stonewalling continues.
- Where Qwest has not expressly refused to provide information regarding customers, it simply fails to respond to requests for information.
- Examples of information Qwest has failed or refused to provide:
  - A list identifying the Transferred Customers whose traffic is being carried on circuits TA obtained from Qwest under the Lit IRU Agreement; and
  - A list of the customers for whom TA is providing Global Service Provider services, along with copies of the relevant contracts (See below, Section X, for more details).
  - Information on billing identifiers/guides on dedicated voice services so that TA can identify how its dedicated customers are identified uniquely and how the DMS250 switches map to this unique identifier.

## **B. Access to Circuit Information**

### Problem

- Similar to its activities in regard to CPNI, Qwest has hindered or refused to provide TA access to information concerning circuits TA obtained either directly from Qwest or through the assumption of third party contracts.
- Two of the Qwest data systems at issue are the F&E and Caspar systems. If TA does not have access to information about all of its customers and the facilities on which its customers' traffic rides, then TA cannot timely and adequately provision services or provide timely or adequate customer care. Again, TA bears the consequences in the customer's eyes, because Qwest's wrongful refusal to provide appropriate access to full information is conducted behind the scenes and out of the customer's view. Consequently, both customers and TA are harmed.

## **C. Access to Billing Information**

### Problem

- Though Qwest is required to perform billing and collection ("B&C") services on behalf of TA in the same manner and under the same conditions as would any independent third party B&C provider, since divestiture, Qwest has refused to provide access to the information TA

needs to ensure that Qwest is properly and accurately billing customers on TA's behalf. The customers for which Qwest bills on behalf of TA are: Transferred Customers, Qwest, itself as TA's customers, and all GSP customers.

#### **RECOMMENDED FCC ACTIONS:**

- By restricting, withholding, and refusing information necessary for TA to serve its customers, and in particular shared customers (i.e., CECs), Qwest is frustrating TA's ability to effectively serve Customers independently of Qwest. Moreover, Qwest's activities with respect to CPNI and other important information under its exclusive control, serve to place Qwest in a position to recapture CECs, which are generally high revenue customers, following 271 clearance because of the continuing and ongoing relationship Qwest has with such customers.
- To remedy the issues encountered with regard to access to CPNI under the control of Qwest, TA submits the Commission must require any future audit to investigate and evaluate Qwest's compliance with its obligation to share and/or provide access to information critical to TA's ability to serve the customers it purchased from Qwest.

#### **IV. Access to Leased Switches**

##### Background

- Through the divestiture, Qwest granted to TA exclusive access to 100% of the functionality of four (4) in-region voice switches. Qwest originally reported that this transaction would be a lease, but then decided it needed to change its approach.
- Qwest has never provided TA with exclusive access to 100% of the functionality of these switches. For purposes of what TA thought it would be obtaining through a lease, TA needs what is called "vendor-defined" read access and write access to these switches. Such access would allow TA to handle customer issues, to manage its traffic through the switch, and to know if Qwest was routing any traffic through the switch.
- TA has ample documentation that customers have suffered greatly because of Qwest's refusal to provide the necessary access. As the customers have suffered, so, once again, has TA, because it is TA that is the vendor, not Qwest.
- In late March 2001, Qwest did provide TA with read access. With read access, customer care improved. At the same time, Qwest revealed to TA that it had been running traffic through the switches.
- In early July Qwest provided TA with write access and, again, customer care improved substantially.
- Qwest terminated write access on or about August 7, 2000, at the same time that it terminated settlement negotiations.

##### Problem

- By refusing to provide TA with access to the 4 voice switches, Qwest severely inhibits TA's ability to address customer issues and to manage its traffic that flows through the switches.

- By refusing full access to the switches, Qwest shields TA from learning about the traffic that Qwest, itself, has and is routing through the switches.
- By refusing full access to the switches, Qwest prevents TA from managing its traffic and from implementing least cost routing decisions. TA's costs have been unnecessarily high because it has been unable to manage its traffic, and Qwest has no incentive to implement least cost routing on TA's behalf. Indeed, Qwest is incented to do just the opposite.
- These actions contradict Qwest's representations to the Commission that Qwest's only role with regard to these switches was to monitor and maintain them. *See Divestiture Compliance Report of Qwest Communications International, Inc.* ("Divestiture Compliance Report"), CC Docket No. 99-272 at Page 42 ("Qwest personnel, on behalf of TA, will monitor and maintain the four in-region circuit switches that TA is leasing.").
- Qwest did not disclose to the Commission or TA that, by changing from a "lease" to a "grant of exclusive access to 100% of the functionality" of the switches, Qwest was changing the substance of the transaction or Qwest's use and management of the switches.

#### **RECOMMENDED FCC ACTIONS:**

- The Commission should audit Qwest's use of the 4 in-region switches to ensure compliance with Section 271.
- Further, the Commission should determine whether Qwest's refusal to provide read and write access to the switches comports with the Commission's understanding of what TA was to receive by leasing the use of these 4 voice switches.

#### **V. Unauthorized Access to TA Information**

##### Problem

- Qwest provides TA with access to certain Qwest data systems.
- Some Qwest employees have what is termed "super user access" that enables them to access TA's accounts and to view TA customer information on these databases.
- Qwest has accessed databases partitioned to TA without TA authorization or TA's knowledge and has, among other activities:
  - Self-provisioned (i.e., ordered circuits for itself);
  - Changed rates to be paid by Qwest to TA; and
  - Transferred third-party circuits to TA.
- Recently, TA discovered that Qwest has issued approximately \$10 million in credits to itself and affiliates over the course of the past year.
  - TA has identified at least 15 different instances in which Qwest issued credits in excess of \$400,000 per credit to Qwest affiliates.
  - Three of the instances involved "re-rating" and exceed \$1 million per episode.
- TA has evidence that these entries were made into the Qwest Casper system and were made without supporting documentation providing the reason, calculation, or the necessary TA authorization.
- In contrast, smaller credits under \$20,000 generally have supporting documentation and have TA authorization.

- Upon request and pursuant to an appropriate confidentiality agreement, TA will provide the Commission with supporting documentation.

**RECOMMENDED FCC ACTIONS:**

- Qwest committed to the Commission and TA that it would manage the partitioned Qwest data systems so that no unauthorized access would occur. *See Divestiture Compliance Report* at Page 41 (“under this licensing arrangement Qwest will create security precautions in its information systems to ensure that sales staffs and customer service representatives of TA have no access to information regarding services provided by Qwest, and sales staffs and customer service representatives of Qwest have no access to information regarding services provided by TA.”).
- Based on information known to TA, it is undeniable that Qwest has and is not living up to its commitments.
- Hence, the Commission should supplement the existing audit with an examination of Qwest’s control access logs for each of the systems to which Qwest granted TA the right of use under the Transition Services Agreement (“TSA”), as well as those systems that Qwest employs in its billing and collection activities pursuant to the TSA. As well, examination of such control access logs should be included within the scope of future compliance audits.

**VI. Understated Revenues and Possible 271 Violations**

**A. 0244 CIC Issue**

Background

- Pursuant to the Stock Purchase Agreement (“SPA”), Transferred Customers and the network facilities and contracts necessary to provide interLATA and intraLATA telecommunications services to the Transferred Customers were to be transferred to TA prior to Qwest’s merger with US WEST.
- Qwest represented to the Commission that “all in-region Qwest switched services will have been switched over to 0244 prior to sale of TeleDistance to TA.” *See Divestiture Compliance Report* at Page 27.

Problem

- TA has documentation that Qwest has failed to transfer all metered customers and services that should have been transferred under the SPA to the Carrier Identification Code 244 (the “244 CIC”) - the CIC associated with Transferred Customers.
- As a result, Qwest improperly assessed TA costs (approximately \$14 million) associated with non-244 CICs, or alternatively, failed to remit customer revenues to TA associated with the non-244 CICs for which Qwest assessed TA the costs. Many of the non-244 CICs that are being billed to TA are CICs assigned to Qwest.
- TA notified Qwest about Qwest’s failure to transfer customers and services to the 244 CIC and that Qwest was assessing TA costs associated with non-244 CICs, or alternatively, had failed to remit customer revenues to TA associated with the non-244 CICs.

- To the extent Qwest is carrying interLATA in-region traffic as is indicated by the bills received by TA for non- 244 CICs associated with Qwest, Qwest is violating Section 271 of the Telecommunications Act.
- Upon request and pursuant to an appropriate confidentiality agreement, TA will provide the Commission with supporting documentation.

#### **B. Other Evidence of Understated Revenues**

- In addition to the loss of revenues associated with the non-244 CICs, TA has evidence that Qwest has generally understated revenues it owes to TA.
- TA cannot determine the magnitude of the understatement of revenues because, as stated above, Qwest controls and limits TA's access to the information needed to make such a determination.
- Despite TA's repeated requests of Qwest to provide TA with complete information necessary to verify revenues and costs and to map Transferred Customers to circuits, Qwest refuses to do so.
- Some examples that support TA's suspicions that Qwest has understated revenues are as follows:
  1. TA possesses customer bills that indicate that Qwest is billing and receiving revenues for in-region service.
  2. TA has information that Qwest is either not billing all circuits related to Transferred Customers on TA's behalf, or is billing Transferred Customers and keeping the revenues.
  3. TA has information that Qwest is or has routed in-region traffic over TA's network, but avoided TA switches, thus depriving TA of the revenues associated with that in-region transport.
  4. TA has information that Qwest is transporting non-Qwest traffic in-region over circuits Qwest designates as carrying corporate communications traffic.
  5. TA has information that Qwest is not paying TA for all of the in-region corporate communications traffic Qwest is routing over TA's network. Qwest recently sent TA disconnect notices for approximately 250 circuits, many of which TA had no knowledge and for which it received no revenues. TA recently sent Qwest a bill for many millions of dollars for Qwest's use of these circuits.
  6. TA has information that Qwest is not giving TA certain revenues related to private line services, where one node is located in-region the other node is located out of region.

- To the extent Qwest is routing traffic in-region for customers, receiving revenues related to Transferred Customers and receiving revenues for in-region services, Qwest is violating Section 271 of the Telecommunications Act.

**RECOMMENDED FCC ACTIONS:**

- An audit of the records pertaining to these activities must be conducted immediately.

**VII. Overstated Costs**

Problem

- Besides generally understating revenues it owes to TA, Qwest has generally overstated costs to TA or caused TA to incur costs that it should not.
- For example, TA has information that Qwest transferred circuits to TA for which TA is being billed either by Qwest or by an off-net vendor, for which there is no Transferred Customer revenue associated with the circuits.
- TA has information that Qwest “renamed” certain circuits that Qwest conveyed to TA under the Lit IRU Agreement but for which Qwest continues to charge TA for those circuits under the Bilateral Wholesale Agreement.
- Qwest’s refusal to allow TA access to the 4 in-region switches has caused TA to incur unnecessary costs because Qwest has failed to route traffic on a least cost basis. Because TA does not have visibility into the switches it had no way of knowing that least cost routing was not occurring.

**RECOMMENDED FCC ACTIONS:**

- An audit of the records pertaining to these activities must be conducted immediately.

**VIII. Billing and Collection Issues**

Background

- Under the TSA, Qwest provides billing and collection (“B&C”) services to TA.
- In addition to failing to provide adequate security for TA’s information described in Section V, above, Qwest has committed other actions that harm TA as a competitor in the marketplace and in the eyes of its customers, as described below:

Problem

1. Misadministration of Early Termination Charges
  - a. Customers who have service terms with TA of one year or longer generally have early termination charges specified in their contracts.
  - b. Should a customer terminate service early, an appropriate termination charge applies.

- c. TA's ability to assess early termination charges is built into the Qwest billing system so that the charges can be automatically billed to the Customer upon early termination.
- d. Without notice to TA or permission from TA, and in violation of its billing and collection obligation under the TSA, Qwest has failed to bill early termination charges to TA customers.

## 2. Billing System Ties TA Into Qwest Out-of-Region Transport

- a. Qwest has refused to bill Transferred Customers when TA has proposed to purchase less expensive services from off net vendors other than Qwest, effectively tying TA into using Qwest as its out-of-region transport provider.
- b. Qwest claims that it can bill for out-of-region transport services only if Qwest and/or its affiliates provides the service.
- c. If this assertion is true, Qwest deliberately configured its billing system in a way that prevents TA from using lower-priced off-net carriers and tied the use of its billing system to the use of Qwest's network.
- d. Qwest has refused to implement any work out of this problem.
- e. Qwest did not inform the Commission or TA that it configured its billing system in such fashion. It effectively said the exact opposite to the Commission when Qwest stated in reference to the Bilateral Wholesale Agreement ("BWA"), "[t]hese contracts specify prices, but do not require either party to purchase any specific amount of capacity, or capacity along any specific route." *See Divestiture Compliance Report* at Page 22.
- f. By tying customer billing under the TSA to use of Qwest capacity under the BWA, Qwest is requiring the use of its capacity. Qwest knew at the time of divestiture that TA had no ability to bill Transferred Customers independently of Qwest, and Qwest took advantage of this by building into its Divestiture Plan the ability to obtain revenues from traffic originating in-region.

### **RECOMMENDED FCC ACTIONS:**

- TA submits the Commission must investigate these practices immediately.

### **IX. Wholesale Billings Practices**

- As the Commission knows, an incumbent local exchange carrier's billing practices on behalf of connecting carriers can have competitive impacts.
- TA has found Qwest's billing practices to fall below minimum industry standards.
- Qwest has and is exacting retribution against TA because TA has disputed Qwest invoices. This retribution is causing TA economic harm, which in turn undermines its competitive position in the marketplace.
- TA has and continues to expend a lot of money and personnel effort on understanding and rectifying, to the extent it can, Qwest's invoices.

## RECOMMENDED FCC ACTIONS:

- As a part of any future audit, TA recommends that the Commission investigate carefully Qwest's billing practices regarding how it implemented the Divestiture transaction. TA is uniquely situated to comment on these practices, in that it is not just another wholesale customer. Through its billing practices, Qwest has effectively raised TA's costs and allowed itself to recover revenues that mitigate the Divestiture purchase price.
- As well, the Commission should investigate Qwest's billing practices so that it understands what it and other carriers can expect from Qwest when and if Qwest is granted 271 relief.
- The Commission should require Qwest to take appropriate corrective actions to improve its billing practices.

## X. Global Service Provider ("GSP") Issues

### Background

- The GSP Agreement requires that TA provide GSP services for Qwest Internet customers. On June 30, 2000, QCC assigned to TA and TA assumed the GSP function with respect to Qwest's existing Internet customers.
- New Qwest Internet customers enter into a separate contract with TA that is an addendum to the Qwest contract with the customer.
- Through its GSP relationship with Qwest, TA has become aware of several activities that warrant Commission investigation and which should be audited for compliance with Section 271 and the Commission's orders.

### Problems

#### 1. **Access to Information**

- To facilitate a streamlined implementation process that benefits customers, TA agreed to a contracting process whereby TA does not interface with its GSP customers on the front end of the transaction.
- As a consequence, TA does not know to whom Qwest is selling TA's GSP services. Only Qwest has this information.
- Qwest refuses to provide complete GSP customer information or contracts, either for assumed customers or for new customers.
- Since Qwest has refused to provide TA with sufficient information to identify customers and to verify customer revenues, TA has no ability to independently contact customers regarding GSP issues.

#### 2. **InterLATA Transport**

- TA has information that Qwest is providing direct connectivity between the in-region Internet Protocol ("IP") GSP Network and out-of-region IP Network utilizing Qwest Communications Corporation private line facilities for the interLATA transport.

- Qwest is prohibited from transporting Internet traffic from the in-region portion of the network to the out-of-region network through such facilities.

### **3. Billing Issues**

- The GSP Agreement requires that Qwest bill, collect and remit to TA the GSP fees Qwest's Internet customers are obligated to pay TA for GSP service.
- Qwest has either failed to bill and collect all funds from end-users for TA's GSP services or Qwest has collected these charges but failed to pay them over to TA.
- Qwest's failure to bill and collect GSP fees impacts TA revenues and TA's customer relations as well, because should TA attempt to collect revenues from customers not properly billed, it is TA that will incur customer wrath, not Qwest.
- Qwest acknowledges that it owes TA GSP revenues, but refuses to remit revenues.

### **4. Denial of Access to Routers**

- Qwest has denied TA access to the routers that TA must have to verify the GSP revenues it should be receiving from Qwest.

#### **RECOMMENDED FCC ACTIONS:**

- TA submits the Commission must ensure a thorough audit of Qwest's compliance with its obligations pertaining to Global Service Provider arrangements.
- Such an audit must ensure that Qwest is billing and collecting properly.
- The audit must also ensure that Qwest is not making routing decisions and that it is not using the GSP function (or, more specifically, the management oversight of the GSP function) to inappropriately (and perhaps unlawfully) route traffic in-region.

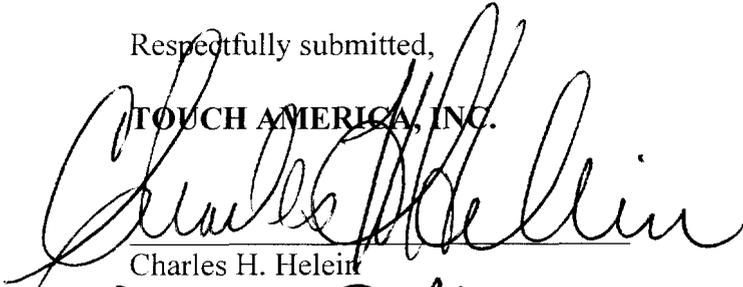
## CONCLUSION

Based on the concerns raised above, the Commission must conclude that the scope of the compliance audit was too narrow. At a minimum, the Commission must reexamine the period covered by the AA audit to examine the totality of Qwest's performance under the Merger and Divestiture Orders. To that end, TA recommends that the Commission investigate Qwest's compliance with each of the 14 major contracts, as those contracts were portrayed to the Commission and as the Commission recognized them in the Final Order.<sup>1</sup> Any future compliance audit should be equally broad. The Commission should require the auditor to contact and work with TA as a unique source of information and knowledge about Qwest's compliance. Finally, the Commission must order the specific auditing actions listed herein.

As indicated, TA possesses substantial documentation supporting its concerns pertaining to each of the items listed above. Upon request, and pursuant to mutually agreed upon arrangements designed to protect proprietary and confidential information, TA will provide such additional documentation to the Commission.

Respectfully submitted,

**TOUCH AMERICA, INC.**

  
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Dated: October 29, 2001

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<sup>1</sup> The 14 contracts are: the Stock Purchase Agreement, the Reorganization Agreement, Calling Card Agreement, Local Access Assignment and Assumption Agreement, Operator Services Agreement, Prepaid Calling Card Services Agreement, Switch Functionality Access Right Agreement ("Switch Agreement"), Bilateral Wholesale Agreement, Collocation License Agreements, IRU Agreement (dark fiber), Global Service Provider Agreement, Transition Services Agreement, IRU Agreement (lit capacity), and Router Functionality Access Right Agreement.

cc. Steven Davis  
Qwest Communications International Inc.  
555 Seventeenth Street  
Denver, CO 80202

Arthur Andersen LLP  
1225 17<sup>th</sup> Street, Suite 3100  
Denver, CO 80202  
Attn: Mr. Brad McQueen

In the Common Carrier Bureau:

Anthony Dale  
Michelle Carey  
Henry Thaggert

In the Enforcement Bureau:

Christopher Olsen

In the Offices of the Commissioners:

Kyle Dixon, Chairman Powell  
Jordan Goldstein, Commissioner Copps  
Sam Feder, Commissioner Martin  
Matthew Brill, Commissioner Abernathy

**ATTACHMENT 1**



LEGAL DEPARTMENT

April 17, 2001

**Via Facsimile 303-291-9200**

Arthur Andersen LLP  
1225 17<sup>th</sup> Street, Suite 3100  
Denver, CO 80202-5531  
Attn: Mr. Brad McQueen

Re: ***Representation Letter***

Dear Mr. McQueen:

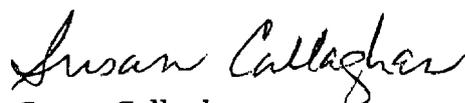
Attached is the representation letter that Arthur Andersen asked Touch America to sign in connection with the work described in the letter. Touch America reluctantly agreed to sign the letter because the statements which Arthur Andersen asked Touch America to confirm are true statements. However, Touch America thinks that, although true, the statements may be misleading, in that they can be read as Touch America's affirmation that Qwest has complied with the Plan, either in letter or in spirit.

As Touch America has communicated to Arthur Andersen, Touch America remains concerned that Qwest has and continues to implement the Plan in a manner that allows it to retain a competitive advantage in recapturing Transferred Customers, once Qwest attains 271 clearance. For example, Qwest refuses to transfer to Touch America all of the billing records and historical information associated with the Transferred Customers, particularly the Common Existing Customers who happen to be the high revenue customers. As a result, Qwest retains important competitive information about Transferred Customers. Since the Closing Date (June 30, 2000), Touch America understands that Qwest has interpreted the contracts between the parties related to the Plan in a manner that minimizes and frustrates Touch America's access both to information about the Transferred Customers and to the network elements necessary to provision services to customers and to provide adequate customers service and care. In addition, in anticipation of divestiture, Qwest configured the billing system it would use to bill Transferred Customers in a manner that precludes Qwest from billing Transferred Customers on behalf of Touch America if Touch America chooses an offnet carrier other than Qwest. As Touch America thinks Qwest would admit (because it has acknowledged as much to Touch America), Qwest could have configured the billing system in a way to avoid this

Arthur Andersen LLP  
Attn: Mr. Brad McQueen  
April 17, 2001  
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problem. Qwest, however, chose to tie use of its network to the billing system, creating unnecessary problems for Touch America. While these issues can be characterized as commercial issues between the parties, taken as a whole, Qwest's behavior may raise 271 issues.

Sincerely,



Susan Callaghan  
Senior Counsel

cc: Michael J. Meldahl



April 16, 2001

Mr. Michael Meldahl  
President & Chief Operating Officer  
Touch America  
130 North Main  
Butte, MT 59701

Arthur An  
Suite 3100  
1225 17th  
Denver CO  
Tel 303 291  
Fax 303 291  
www.anda

406 497-2451

Dear Mr. Meldahl:

In connection with our engagement to perform an attestation examination of Qwest Communications International Inc.'s ("Qwest" or the "Company") Statement of Management Assertions (the "Assertions") related to compliance with the relevant requirements of Section 271 of the Communications Act, as amended ("Section 271") as of December 31, 2000 and for the six-month period then ended ("the presentation"), we request that you confirm, to the best of your knowledge and belief, as of the date of this letter, the following items:

1. Qwest and Touch America are independent companies and the transfer of all services and customer accounts in accordance with the Plan, once accepted by Touch America, are final and irrevocable.
2. Touch America has assumed responsibility for providing services covered by the transitional support services agreement that expired on December 31, 2000, with Qwest in accordance with the deadlines described in Qwest's Final Divestiture Plan submitted to the Federal Communications Commission ("FCC") on April 14, 2000.

This letter is solely for the information and use of Arthur Andersen LLP in connection with our engagement discussed above and will not be circulated or used for any other purpose.

Very truly yours,

*Arthur Andersen LLP*

Acknowledged and agreed:

*Michael J. Meldahl*  
Michael J. Meldahl  
President and Chief Operating Officer