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May 3, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW B204
Washington, D.C. 20554

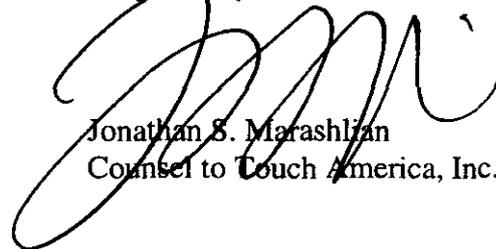
**Re: Qwest Communications International – Reports of Independent
Public Accountants, Statement of Management Assertions, and
Executive Certification of Compliance, CC Docket No. 99-272**

Dear Ms. Dortch:

On April 8, 2002, Touch America, Inc. ("Touch America"), by its attorneys, submitted the attached letter to the Enforcement Bureau. The letter pertains to the above-captioned docket, CC Docket No. 99-272. By this letter, Touch America seeks to have the attached letter officially filed in the above-captioned docket.

An extra copy of this filing is enclosed. Please date stamp and return to the undersigned. Should you have any questions, please do not hesitate to contact me.

Respectfully,



Jonathan S. Marashlian
Counsel to Touch America, Inc.

Enclosure

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April 8, 2002

HAND DELIVERED VIA COURIER

David Solomon
Chief, Enforcement Bureau
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Re: Touch America Demand for Customer Information

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

Dear Mr. Solomon:

Touch America, Inc. ("Touch America"), through its attorneys, hereby asks the Enforcement Bureau of the Federal Communications Commission ("FCC" or "Commission") to issue a mandatory order directing Qwest Communications International Inc. ("Qwest") and/or Arthur Andersen, L.L.P. ("Andersen") to immediately provide Touch America with all customer, circuit and other customer proprietary network information ("CPNI") associated with the customer accounts identified as Touch America customers (hereafter, "TA Customer Information") in the 2001 and 2002 Reports of Independent Public Accountants, *In re Applications of Qwest Communications International Inc. and U S WEST, Inc.*, CC Docket No. 99-272, dated September 7, 2001 and March 11, 2002 (together, "Audit Reports" or "Andersen Audits")(attached hereto as Exhibits A and B).

In the Final Audit Report for the period July 1, 2000 through December 31, 2000 ("2001 Audit Report"), Andersen reported that Qwest's records showed 447 customers with prohibited in-region, interLATA codes. Of these, 255 pertained to non-metered (e.g. private line) Touch America customers that were improperly billed and branded as Qwest customers from July 1, 2000 to July 31, 2001. The Audit Report for the period

January 1, 2001 through December 31, 2001 ("2002 Audit Report") indicates that 657 customers with prohibited in-region, interLATA codes turned up in the most recent audit. Of these, 330 pertained to Touch America private line customers that were billed and branded as Qwest customers during the year ended December 31, 2001. An additional 158 such customer accounts were found to exist, but Andersen reported that these customers were not billed during 2001 (a finding irrelevant to Touch America's instant request for TA Customer Information). The Audit Reports show that Qwest remitted to Touch America payments pertaining to the customers identified in the 2001 Audit Report in May and August of 2001 in the amounts of \$856,863 and \$3,977,818, respectively, but that Qwest is withholding payments associated with customers identified in the 2002 Audit Report pending the outcome of pending arbitration between Qwest and Touch America. Touch America received the two payments identified in the 2001 Audit Report in the form of cashier's checks made payable to Touch America. Qwest's submission of these payments, however, did not contain a shred of information identifying the customers and/or circuits to which the payments applied, or the revenues associated with each customer.

With regard to the findings in the 2001 Audit Report, Touch America informed the Commission that it made repeated attempts to obtain the TA Customer Information directly from Qwest, but that these attempts had been rebuffed. Touch America requested then that the Commission require Qwest to provide such TA Customer Information to Touch America. See Letter from Charles H. Helein and Jonathan S. Marashlian to Dorothy Attwood, Chief, Common Carrier Bureau, and David Solomon, Chief, Enforcement Bureau, *In re Applications of Qwest Communications International Inc. and U S WEST, Inc.*, CC Docket No. 99-272 (dated October 29, 2001). Until very recently, Qwest failed to respond to any of Touch America's requests. Even then, its only response has been to inform Touch America (and to declare under penalty of perjury in formal proceedings) that its refusal to provide the TA Customer Information to Touch America is based on its "understanding" that the information is not Qwest's to disclose. See Answer of Defendants Qwest Communications International Inc., Qwest Corporation, and Qwest Communications Corporation, File No. EB-02-MD-004, Declaration of Paty Moehlman, Exhibit 3 at ¶ 21 (attached hereto at Exhibit C) ("Qwest did not provide Touch America with specific information regarding customers for which the billing mistakes were made because it was Qwest's understanding that the information was the product of an audit conducted by Arthur Andersen for the Federal Communications Commission, and, as such, the information was not Qwest's to disclose."). Qwest has implied that Touch America should seek the information from Andersen or the Commission.

Qwest's refusal to provide to provide Touch America with the TA Customer Information is wrong, indefensible and deliberately designed to damage Touch America and to ignore the customers' rights to have their carrier, Touch America, armed with the information needed to serve them. Qwest attempts to justify its inaction is disingenuous. As both the Commission and Qwest well know, Qwest, not Andersen or the Commission, is ultimately responsible and capable of disclosing the information.

The TA Customer Information belongs to Touch America because it pertains to Touch America customers that were improperly retained by Qwest following Merger and Divestiture and, in hundreds of instances, were improperly and unlawfully billed and branded by Qwest as its own customers. Nowhere in any of the Commission's orders is there even a hint that because the TA Customer Information was discovered and disclosed as a result of Andersen's Audits, and thus is likely contained in audit work papers filed with the Commission that the information is under Andersen's exclusive control or that Andersen and/or the Commission, and not Qwest, has the sole authority to release it to Touch America.¹ Quite the contrary, the TA Customer Information was found by Andersen in Qwest's systems and, as such, Qwest not only possesses such information, it also has access to it and the ability and authority to provide it to Touch America irrespective of the audit work papers or the audits themselves. This irrefutable fact renders Qwest's stated reason for not providing the TA Customer Information to Touch America unsupported and establishes Qwest's refusal as an overt maneuver to frustrate Touch America's ability to serve and manage its customers.

The TA Customer Information sought by the instant request, including the "subscriber list" information (e.g., customer name, telephone and address) and CPNI related thereto, belongs to Touch America. The subscriber list is Touch America's property through its purchase of Qwest's divested customers and the associated federal prohibition on Qwest's provision of in-region, interLATA services. The CPNI related thereto is owned and controlled by Touch America's customers. And as Touch America customers, the information relating thereto rightfully belongs to Touch America through its carrier-customer relationship. *See* 47 U.S.C. § 222(f)(1)(A) (CPNI is defined as: (A) "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;" and (B) "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.").

Touch America is mindful that Section 220(f) of the Communications Act generally prohibits Commission personnel from disclosing publicly facts and information obtained during an audit absent a Commission or court order. 47 U.S.C. § 220(f). However, Touch America is not asking here that the audit work papers themselves be

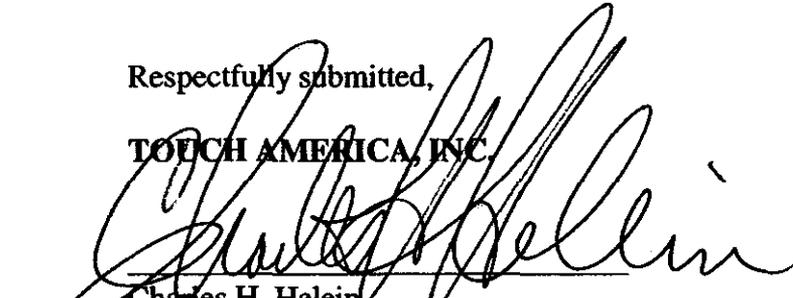
¹ Even if true that the TA Customer Information does not exist or cannot be obtained independent of the Andersen Audits and work papers, incredible as such a claim by Qwest would be, any implication by Qwest that Andersen, and not Qwest, has the sole authority to disclose the information contained in the Audit Reports to Touch America fails. For if Andersen must seek its client's specific consent before disclosing any confidential information, then Qwest, Andersen's client, surely has the authority to release the information directly. *See* American Institute of Certified Public Accountants Code of Professional Conduct Rule 301 (Confidential client information. A member in public practice shall not disclose any confidential client information without the specific consent of the client).

released, either to Touch America or the public. What Touch America seeks is a Commission order requiring Qwest and/or Andersen to simply provide Touch America with critical customer information that is contained in Qwest's records, systems, or otherwise under Qwest's control, or in the Andersen audit papers - information that rightfully belongs to Touch America.

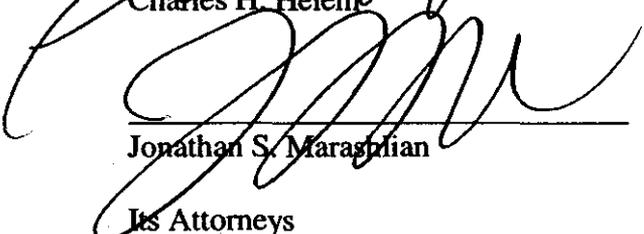
Touch America respectfully asks the Commission to take immediate steps towards issuing a mandatory order compelling Qwest and/or Andersen to provide to Touch America all TA Customer Information pertaining to the customer accounts identified in the 2001 and 2002 Audit Reports and discussed above.

Respectfully submitted,

TOUCH AMERICA, INC.



Charles H. Helein



Jonathan S. Marashlian

Its Attorneys

THE HELEIN LAW GROUP, P.C.
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102
Tel: (703) 714-1300
Fax: (703) 714-1330

Dated: April 8, 2002

cc. **R. Steven Davis**
Senior Vice President, Government Affairs
Qwest Services Corporation
1801 California Street
Denver, CO 80202

In the Enforcement Bureau, Investigations and Hearings Division:

Charles Kelley, Chief
Maureen Del Duca, Deputy Chief
Anthony Dale, Assistant Chief
Mike Stone

EXHIBIT A

2001 Final Audit Report

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Qwest Communications International Inc.
and the Federal Communications Commission:

We have examined Qwest Communications International Inc.'s (the "Company") accompanying Statement of Management Assertions (the "Statement") related to compliance with the relevant requirements of Section 271 of the Communications Act, as amended ("Section 271"). The Company's Statement is made pursuant to the requirements of the Federal Communications Commission's ("FCC") March 10, 2000 and June 26, 2000 Memorandum Opinions and Orders in Docket No. 99-272, *In the Matter of Qwest Communications International Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License* ("FCC Orders"). In this proceeding the Company submitted a plan regarding the divestiture of its in-region interLATA services in compliance with the relevant requirements of Section 271. This plan was set forth in a Divestiture Compliance Report submitted to the FCC on April 14, 2000, and in subsequent filings by the Company with the FCC in Docket No. 99-272 (collectively, the "Company Divestiture Plan"). In the June 26 Order the FCC approved the Company Divestiture Plan as consistent with Section 271, subject to certain specified modifications to that Plan set forth in the Order (as so modified, the "Final Divestiture Plan"). This Statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this Statement based on our examination.

Our examination was made in accordance with standards established by the American Institute of Certified Public Accountants and accordingly, included examining on a test basis, evidence supporting Management's assertions, as well as such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Company's compliance with the specified requirements.

In our report dated April 16, 2001, our opinion on Management's assertions was qualified due to certain customer contracts selected for testing to verify that Qwest did not provide prohibited joint volume discounts not being available for our review. We have completed our procedures with respect to this requirement and noted no instances of Qwest providing prohibited joint volume discounts. Accordingly, our present opinion on Management's assertions, as presented herein, is unqualified.

Management has asserted that:

1. As of the closing of the merger of the Company with U S WEST, Inc. on June 30, 2000, the Company had divested its prohibited in-region interLATA services in accordance with the Final Divestiture Plan and the FCC's Orders in Docket No. 99-272.

2. The Company has implemented methods, procedures and internal controls that enable it to operate its business in accordance with the Final Divestiture Plan and the FCC's Orders in Docket No. 99-272.
3. For the period from July 1, 2000 to December 31, 2000, the Company has operated its business in accordance with the Final Divestiture Plan and the FCC's Orders in Docket No. 99-272.

In our opinion, the Company's Statement is fairly stated, in all material respects.

As further discussed in Attachment I, we noted certain variances from the Final Divestiture Plan and the FCC Orders, which did not impact our opinion on management's assertions as a whole.

This report is intended solely for the information and use of the Board of Directors and management of the Company and the FCC and should not be used for any other purpose. Since this report will be filed in documents that are a part of the public record, its distribution is not limited.

Arthur Andersen LLP

Denver, Colorado,
September 7, 2001.

ATTACHMENT I to REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Qwest Communications International Inc.
and the Federal Communications Commission:

As indicated in our report dated September 7, 2001, we noted certain variances from Qwest's Final Divestiture Plan and the FCC Orders, which did not impact our opinion on management's assertion as a whole, a description of which follows.

Through the course of our work related to Qwest's identification and divestiture of customer accounts, we noted that the account records of 447 customers included prohibited in-region interLATA service component codes. These in-region interLATA service component codes were added to the customer accounts after June 30, 2000.

Of the 447 customers with prohibited in-region interLATA service component codes, 192 of these customers had only metered in-region interLATA services. A judgmental sample of invoices reviewed related to these 192 customers properly identified Touch America as the carrier of the services in accordance with the Final Divestiture Plan. Of the 447 customers with prohibited in-region interLATA service component codes, certain non-metered services (e.g. private line services) for 255 customers were billed and branded as Qwest services.

At Qwest's request, we queried the billing system to search for other billings that could have included prohibited in-region interLATA service component codes. We noted additional account records for non-metered services that included prohibited in-region interLATA service component codes, which are in addition to the 255 customer account records discussed above. Our testing indicates that the non-metered services related to both the original 255 customer account records and the additional account records were provided by Touch America, and were billed at rates set forth in contracts that Touch America assumed at divestiture. The total amount of revenues billed as Qwest service related to the combined population of customers discussed above from July 1, 2000 through July 31, 2001 was \$4,958,647. Qwest transferred funds to Touch America in May 2001 in the amount of \$856,863, representing an initial settlement of the amount due. The Company remitted the remaining amount due of \$3,977,818 which is net of \$123,966 for the estimated bad debts related to such amount to Touch America on August 31, 2001.

EXHIBIT B

2002 Audit Report

ANDERSEN

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Qwest Communications International Inc.
and the Federal Communications Commission:

We have examined Qwest Communications International Inc.'s (the "Company") compliance with the Merger Orders¹ during the period from January 1, 2001 through December 31, 2004 (the "Evaluation Period"). Management is responsible for the Company's compliance with the Merger Orders. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and accordingly, included examining on a test basis, evidence about the Company's compliance with the Merger Orders, as well as such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal representation on the Company's compliance with the specified requirements.

Our examination disclosed two formal complaints filed by Touch America with the Commission against Qwest. We have reviewed the Touch America complaints (except for those portions under the Commission's Protective Order), noting that they allege: 1) that Qwest has not complied with its Final Divestiture Plan and 2) that Qwest has violated Section 271 through the sale of indefeasible rights of use ("IRUs") in its in-region local service area. We are aware that Qwest believes that it has complied with the Final Divestiture Plan, that the sale of IRUs is permitted under Section 271 and that Touch America's allegations are without merit. In addition, we are aware that arbitration and judicial proceedings are pending between Qwest and Touch America to resolve contractual and commercial disputes. The Commission has not issued a ruling on the complaints filed by Touch America as of the date of this report. The arbitrator and the court have not issued rulings on the contractual and commercial matters as of the date of this report.

In our opinion, except for the impact, if any, of the ultimate resolution of the legal matters discussed in the preceding paragraph, the Company complied, in all material respects, with the Merger Orders during the Evaluation Period.

¹ In the Matter of *Qwest Communications International Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License, Memorandum Opinion and Order*, CC Docket No. 99-272, FCC 00-231 (released June 26, 2000) (the "June 26 Order") and FCC 00-91 (released March 10, 2000) were issued (collectively, the "Merger Orders"). The Company submitted a plan to the Federal Communications Commission (the "Commission") regarding the divestiture of its in-region interLATA services in compliance with the relevant requirements of Section 271. This plan was set forth in a Divestiture Compliance Report submitted on April 14, 2000, and in subsequent filings by the Company with the Commission in Docket No. 99-272 (collectively, the "Company Divestiture Plan"). In the June 26 Order, the Commission approved the Company Divestiture Plan as consistent with Section 271, subject to certain specified modifications to that plan set forth in the June 26 Order (as so modified, the "Final Divestiture Plan").

The Merger Orders require that we report all noted instances of non-compliance whether or not deemed to be material. As further discussed in Attachment I, we noted certain variances from the Merger Orders, which did not impact our opinion on the Company's compliance with the Merger Orders as a whole.

This report is intended solely for the information and use of the Board of Directors and management of the Company and the Commission and should not be used for any other purpose. Since this report will be filed in documents that are a part of the public record, its distribution is not limited.

Arthur Andersen LLP

Denver, Colorado,
March 11, 2002.

ATTACHMENT I to REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Qwest Communications International Inc.
and the Federal Communications Commission:

As indicated in our report dated March 11, 2002, through the course of our work, we noted certain variances from the Merger Orders, which did not impact our opinion on Qwest's compliance as a whole, a description of which follows.

In-Region Service Component Codes

We noted that 657 customer account records used for billing included prohibited in-region interLATA service component codes as of December 31, 2001. A single customer may have multiple customer account records. The Company believes that these in-region service component codes represent services that were ordered before June 30, 2000, but were not provisioned until after the merger.

Of the 657 customer account records with prohibited in-region interLATA service component codes as of December 31, 2001, 169 of these customer account records had only metered in-region interLATA services. A judgmental sample of invoices reviewed related to these customer account records properly identified Touch America as the carrier of the services in accordance with the Merger Orders.

During the year ended December 31, 2001, 330 customer account records with prohibited in-region interLATA service components codes for certain non-metered services (e.g. private line services) were billed and branded as Qwest services. The additional 158 customer account records which contained prohibited in-region interLATA service component codes did not bill during 2001. The total amount of revenues billed as Qwest services related to these 330 customer account records for the year ended December 31, 2001 was approximately \$2.8 million. We also noted that approximately \$11,000 of revenues related to these customers was billed as Qwest service from January 1, 2002 through January 31, 2002. We understand that these amounts are subject to adjustment pending the outcome of the pending arbitration between Qwest and Touch America.

Qwest remitted approximately \$2.2 million to Touch America during 2001 related to such amounts, net of the estimated bad debts. The estimated remaining amount due, net of estimated bad debt expense, of approximately \$569,000 has not been paid to Touch America as of the date of our report, pending the outcome of the arbitration between Qwest and Touch America. We make no comment on the amount withheld for estimated bad debts.

Double Billing

In 2001, Qwest informed us that it had discovered that Qwest double billed certain customers for communications services provided by Touch America during 2001 due to a coding error in Qwest's billing system. The Company informed us that affected customers have been or will be given a credit for the amount of double billing. The Company informed us that the coding error was fixed during 2001. Our testing of the controls put in place to fix this coding error indicate that the controls were properly designed and operating effectively upon their implementation.

We also noted that certain customers were double billed pre-authorized interexchange carrier ("PICC") charges during 2001. The Company has informed us that this issue occurred because one of the telemarketers was adding redundant PICC codes to customer accounts. The Company has informed us that it is taking the appropriate action to change the practices of this telemarketer and put system controls in place to prevent this from occurring in the future. Based upon its review, the Company believes that the number of affected customer account records will not exceed 21,000 and that the dollar amount to be credited to customer accounts related to this issue will not exceed \$1 million. The Company has determined that each affected customer is an out-of-region customer and accordingly, the Company does not believe that this issue affects its compliance with the Merger Orders. Based upon our testing of a statistical sample of these customers, we are of the opinion that these customers are out-of-region customers.

Global Service Provider

We noted that certain invoices during 2001 for approximately 1,000 customers who subscribe to Internet-related services did not include a separate Global Service Provider ("GSP") charge for in-region internet/ATA Internet traffic carried by Touch America. The estimated amount of Internet-related billings which should have been billed as Touch America GSP charges was approximately \$2 million for 2001. Qwest has not remitted payment to Touch America as of the date of our report pending the outcome of the arbitration between Qwest and Touch America.

Sales Agent Contracts

We requested a statistical sample of sales agent contracts from Qwest as part of our testing. Of the sales agent contracts requested in our statistical sample, the Company could not locate three sales agent contracts; however, our testing of commissions paid to sales agents, including these three sales agents, indicated that commissions based upon combined Qwest and Touch America sales volumes were not paid, except as provided for in the Merger Orders.

Prepaid Calling Cards

We noted that certain amounts received by Qwest for the sale of prepaid calling cards were not remitted to Touch America for in-region internet/ATA traffic which was carried by Touch America. The estimated amount that was not properly remitted to Touch America during 2001 as a result of this issue was approximately \$140,000 which relates to approximately \$6,000 prepaid card calls. Qwest has not remitted payment to Touch America as of the date of our report pending the outcome of the arbitration between Qwest and Touch America.

Qwest Employee Access to Customer Account Records

We noted that there were three employees who served on the "major account support team" ("MAST") in transitioning significant divested customer accounts to Touch America who also had "super-user" access for all or a portion of the time the employee served in the MAST. "Super-user" access allows an employee to view and, when necessary, make changes to both Qwest and Touch America customer accounts and is generally only given to billing support employees. The Company does not believe that the employees took any actions contrary to the Merger Orders during this period of overlap. Nothing came to our attention as a result of our testing that indicates any actions taken by these employees were in violation of the Merger Orders.

EXHIBIT C

Declaration of Paty Moehlman

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

TOUCH AMERICA, INC.,)	
)	
Complainant,)	
)	
v.)	File No. EB-02-MD-004
)	
QWEST COMMUNICATIONS)	
INTERNATIONAL INC.,)	
QWEST CORPORATION, and)	
QWEST COMMUNICATIONS)	
CORPORATION,)	
)	
Defendants.)	
)	
)	

DECLARATION OF PATY MOEHLMAN

I, Paty Moehlman, do swear and affirm as follows:

1. My name is Paty Moehlman. I am employed by Qwest Services Corporation ("QSC"), which is the parent company of Qwest Communications Corporation ("Qwest"), as Senior Manager-Strategic Alliances. I make the statements in this declaration based on my capacity in that position.

2. In or about March 2000, I, along with other Qwest representatives, met with Touch America representatives and (for a number of days) explained to Touch America representatives the types of data and the methods of accessing the data that Touch America would have should Touch America agree to license the use of Qwest's database and systems pursuant to the Transition Services Agreement (the "TSA").

agreements with Touch America did not provide that Touch America would directly access PROD, although its existence was disclosed in those agreements and during the March 2000 meetings. Although Touch America did not have direct access to PROD, Touch America had access to information through other Qwest databases and systems.

21. In May and August 2001, Qwest remitted to Touch America amounts due for Touch America service that had mistakenly been billed in the name of Qwest. Those billing mistakes, which Qwest corrected, were not in any way intentional. Qwest did not provide Touch America with specific information regarding customers for which the billing mistakes were made because it was Qwest's understanding that the information was the product of an audit conducted by Arthur Andersen for the Federal Communications Commission, and, as such, the information was not Qwest's to disclose. Touch America may verify the customers and payments through other sources available to Touch America, such as CASPER.

22. I have reviewed Touch America's allegations in ¶ 254 of the Business Disputes Complaint regarding GSP information. Qwest provided Touch America with the information in Qwest's possession listing Touch America's GSP customers.

23. I have reviewed Touch America's allegations in ¶ 264 of the Business Disputes Complaint. It would not be unusual for Touch America to receive charges from other vendors for services associated with non-244 CICs because when there is heavy traffic and Touch America trunk loads are full, the switch will transfer a call off-net to another carrier's line in order to complete the call. In such a circumstance, the third-party carrier, which would not have a 244 CIC, would charge

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 20, 2002 in Denver, Colorado.


Paty Moehlman