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June 13, 2002

02-148

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Qwest Communications International Inc.
Consolidated Application of for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota

Dear Ms. Dortch:

Pursuant to Section 271 of the Telecommunications Act of 1996 and the Commission's *Public Notice*, "Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act," DA 01-734 (March 23, 2001) (re-released April 27, 2001), Qwest Communications International Inc., on behalf of itself and its subsidiaries, Qwest Corporation and Qwest Communications Corporation (collectively, "Qwest"), submits herewith its Consolidated Application for Authority to Provide In-region InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota ("Application").

Qwest's submission contains the following items:

- An original and one paper copy of the Brief in support of the Application, its associated attachments, and Appendices A through E.
- One CD-ROM set in read-only format containing the Brief in support of the Application, its associated attachments, and Appendices A through E.
- Three CD-ROM sets in read-only format containing the archival portions of the Application (Appendices F through P).
- One paper copy of each document containing confidential material, together with a letter identifying the confidential documents being submitted.

No. of Copies rec'd 0+1
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Concurrently herewith, Qwest is submitting under separate cover the following items to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW, 5-C 201, Washington, D.C. 20054:

- 12 copies of the entire Application in paper form.
- 12 CD-ROM sets in read-only format containing the entire Application.
- Two paper copies of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents being submitted.

Also concurrently herewith, Qwest is submitting under separate cover the following items to Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, 1401 H. Street NW, Suite 8000, Washington, D.C. 20530:

- 8 copies of the entire Application in paper form.
- 8 CD-ROM sets in read-only format containing the entire Application.
- One paper copy of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents submitted with the Application.

Qwest also is providing copies of its Application in paper and CD-ROM form to the pertinent state regulatory authorities and the FCC's copy contractor, Qualex International. Qwest will make the Application available on its website, appropriately redacted to exclude confidential documents.

Inquiries regarding access to the confidential materials included in the Application should be directed to the following:

C. Jeffrey Tibbels
Hogan & Hartson L.L.P.
555 13th Street NW
Washington, DC 20004
tel: 202-637-6968
fax: 202-637-5910

Qwest is filing under separate cover today a Motion regarding the commencement of service upon grant of the relief requested in the Application.

Finally, also enclosed is an extra copy of this letter to be stamped as received and returned via our messenger.

Questions concerning this submission should be directed to the undersigned.

Respectfully submitted,

Hogan & Hartson L.L.P.

By: _____
Peter A. Rohrbach
Mace J. Rosenstein
Yaron Dori

Counsel for Qwest Communications International Inc.

Enclosures

cc: Janice Myles
Nancy Goodman
Qualex International
Colorado Public Utilities Commission
Idaho Public Utilities Commission
Iowa Utilities Board
Nebraska Public Service Commission
North Dakota Public Service Commission

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No.** 02-148
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota	)	

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BRIEF OF
QWEST COMMUNICATIONS INTERNATIONAL INC.
IN SUPPORT OF CONSOLIDATED APPLICATION
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN
COLORADO, IDAHO, IOWA, NEBRASKA AND NORTH DAKOTA

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June 13, 2002

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Before the
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Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	**WC Docket No. _____**
	)	
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota	)	

To: The Commission

BRIEF OF
QWEST COMMUNICATIONS INTERNATIONAL INC.
IN SUPPORT OF CONSOLIDATED APPLICATION
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN
COLORADO, IDAHO, IOWA, NEBRASKA AND NORTH DAKOTA

Pursuant to Section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 ("1996 Act" or "Act"), Qwest Communications International Inc. ("QCII"), on behalf of itself and certain of its subsidiaries, 1/ hereby submits this consolidated application for authority to provide interLATA interexchange service (including services identified in Section 271(j), 47 U.S.C. § 271(j)) originating in the states of Colorado, Idaho, Iowa, Nebraska and North Dakota. 2/

1/ The QCII subsidiaries that are parties to this application are Qwest Corporation ("QC") and Qwest Communications Corporation ("QCC") (collectively, and together with QCII, "Qwest").

2/ The Act and this Commission's procedures provide that a single filing may embody multiple separate requests for relief under Section 271, *i.e.*, for more than one state. *See* 47 U.S.C. § 271(d)(1); Public Notice, "Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act," DA 01-734 (March 23, 2001) (re-released April 27, 2001), at 5. The presentation in this Consolidated Application is consistent with the Commission's instructions that a multi-state filing "make state-specific evidentiary

INTRODUCTION AND EXECUTIVE SUMMARY

Two years ago this month Qwest and U S WEST completed their unique merger: the combination of a Bell Operating Company and a leading interexchange carrier focused on the future of advanced telecommunications services. The "new" Qwest had two overriding corporate commitments: (1) to improve retail and wholesale service quality throughout its local exchange region, and (2) to accelerate and complete the process of opening its local markets to competition. The post-merger Qwest has approached these priorities with additional vigor and hundreds of millions of dollars in additional resources. Thousands of employees throughout the company have devoted themselves to the task.

This Application stands on the foundation of these efforts. The local exchange market in the Qwest region is entirely different than it was two years ago. Competition is active and growing. CLECs are using new wholesale products and systems to challenge Qwest successfully in the marketplace. And these tools are available to meet future demand as CLECs expand their operations in the region.

In particular, this Application demonstrates that local markets in the five states of Colorado, Idaho, Iowa, Nebraska and North Dakota are "irreversibly open to competition," *New York 271 Order*, 15 FCC Rcd at 4164 ¶ 429, and that Qwest has fully satisfied the requirements

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showings" and that it "separately identify each state's relevant performance data." Public Notice at 5. Accordingly, notwithstanding that many procedural and operational elements discussed herein are common to some or all of the five captioned states, each request for Section 271 relief is independent of the others. A copy of this Consolidated Application is available at http//www.qwest.com/about/policy/ldReentry/Fed271.

Qwest will shortly file applications with the FCC for authorization under 47 U.S.C. § 214 to provide international services originating in Colorado, Idaho, Iowa, Nebraska and North Dakota.

of Section 271 of the Telecommunications Act. 3/ Utility regulators in these states (collectively, the "State Authorities") have completed their own review processes and agreed that Qwest meets the criteria for interLATA authority. Qwest anticipates that other states will complete their own review processes soon.

Indeed, Qwest's actions to implement the Telecommunications Act were matched in energy and thoroughness by the regulators in its region. This Application culminates literally years of work by State Authorities and their staff, both independently and collaboratively, to help open local markets. They have held exhaustive proceedings to address every facet of local market entry. CLECs have participated comprehensively throughout these dockets. Negotiated solutions have been reached on the vast majority of issues, and then implemented on a regional basis.

Similarly, working through the Regional Oversight Committee ("ROC"), the five states here (as well as eight others) uniquely collaborated on procedures for reviewing Qwest's performance and OSS on a regional basis. They developed the most detailed set of performance measures in the country. They also conducted by far the most comprehensive third party OSS test ever undergone by a BOC. Here again, CLECs and other interested parties have participated every step of the way. To the extent issues were identified, Qwest implemented solutions. The final test report, and the monthly performance data, together make a compelling showing that CLECs have a meaningful opportunity to compete.

The FCC can and should rely heavily on the thorough record assembled by the Colorado Public Utilities Commission ("CPUC"), the Idaho Public Utilities Commission ("IPUC"), the Iowa Utilities Board ("IUB"), the Nebraska Public Service Commission ("NPSC")

3/ A Glossary of all defined citations is attached hereto.

and the North Dakota Public Service Commission ("NDPSC") (collectively, the "State Authorities"). These bodies, working both independently and together, have demonstrated a sustained commitment to competition. They have helped lead the process by which local exchange competition has taken root and flourished in their states. They have established mechanisms for on-going enforcement after this Application is granted.

Specifically, the records of the state proceedings establish the following:

- Qwest has met the requirements of "Track A" in each of the five application states. 47 U.S.C. § 271 (c)(1)(A). Competition is active in each of the five states.
- Qwest has satisfied each of the 14 competitive checklist items for each state, as demonstrated by its "real-world" commercial performance. 47 U.S.C. § 271(c)(2)(B).
- Qwest has developed nondiscriminatory operations support systems ("OSS") and is meeting the collaboratively developed performance measures across the board. Qwest's strong performance has been confirmed by the results of the comprehensive ROC test.
- Qwest's rates for unbundled network elements ("UNEs") and other interconnection offerings fully satisfy the Commission's established pricing standards.
- Qwest has established a separate affiliate for the provision of in-region interLATA services, and each of the State Authorities has concluded that it satisfies the requirements of Section 272.
- The application states have adopted comprehensive and self-executing enforcement plans that subject Qwest to aggregate penalties of up to more than $200 million annually if, in the future, the company fails to satisfy key performance measures.
- Qwest has shown that its entry into the interLATA business in each of the states will promote the public interest in making the interLATA market more competitive, resulting in lower prices, expanded consumer choice and better service.

In short, Qwest has met the goals it set for the merged company two years ago. The company has satisfied all the statutory criteria for the provision of interLATA service.

Local markets are "irreversibly open to competition" in the states of Colorado, Idaho, Iowa, Nebraska and North Dakota. Now Qwest looks forward to bringing new long distance services and pricing options to consumers and businesses in those states.

* * * *

Qwest summarizes below how it meets each element of Section 271 of the Telecommunications Act. These matters are discussed in more detail in the Declarations attached hereto in App. A, and supported by the record materials provided in Appendices B-P.

Section I of this brief describes the comprehensive processes through which the five state commissions developed a record of Qwest's satisfaction of Section 271. Qwest demonstrates that these proceedings were open to interested parties, and comprehensive in their treatment of relevant issues. Section II explains why Qwest is eligible to seek interLATA authority under Section 271(c)(1)(A) based on the competition present in each of the five states. Section III describes how Qwest meets each of the 14 checklist requirements of Section 271(c)(2)(B), including an explanation of the measures used to evaluate performance in this area. Section IV demonstrates that unbundled network elements and interconnection are priced consistently with applicable rules. Section V explains the steps Qwest has taken to comply with Section 272. Finally, in Section VI, Qwest reviews why grant of this Application is strongly consistent with the public interest.

I. THE FINDINGS AND CONCLUSIONS OF THE STATE AUTHORITIES SHOULD BE ACCORDED SUBSTANTIAL WEIGHT IN DETERMINING THAT QWEST HAS SATISFIED THE REQUIREMENTS OF SECTION 271

The FCC places substantial reliance on the factual investigation and findings of state regulators in its review of BOC Section 271 applications. *See, e.g., New York 271 Order,*

15 FCC Rcd at 3974-75. Where a state has conducted lengthy, thorough proceedings and has provided all parties ample opportunity to participate, that reliance becomes even stronger. *Id.*

As we show below and in the Declarations of Paul R. McDaniel, James M. Schmit, Max A. Phillips, Timothy Sandos and Scott A. Macintosh regarding the proceedings in, respectively, Colorado, Idaho, Iowa, Nebraska and North Dakota, Att. 5, App. A, the five State Authorities have spent several years and extensive resources in reviewing Qwest's work to adapt its systems to the new competitive environment mandated by the 1996 Act. They drew on the efforts of the FCC and their counterparts in the other states within the 14-state Qwest region to ensure that their consideration of Qwest's application would embody the four elements that are "particularly important" to the success of the Section 271 process:

- Full and open participation by all interested parties.
- Development of clearly defined performance measures and standards.
- Extensive independent third party testing of OSS offerings.
- Adoption of performance assurance measures that create a strong financial incentive for post-entry compliance with the Section 271 checklist.

New York 271 Order at ¶ 8.

Applying the principles outlined above, each of the states conducted individual proceedings to evaluate Qwest's record. They also collaborated with one another in important respects.

The ROC Process. First, all five State Authorities are participants in the ROC and have adopted and implemented the performance measures (performance indicator definitions, or "PIDs") developed through the ROC. All five have relied upon the results of the Third Party Test of Qwest's region-wide OSS. This matter is discussed in detail in Section III(C) below.

The Multistate Collaborative Process. Separately, Idaho, Iowa and North Dakota pooled their resources to conduct a joint Section 271 factfinding process on aspects of the competitive checklist, Section 272 Track A and the public interest, including post-entry performance assurance. *See* Phillips Iowa Process Decl. at 2-9; *see also* Schmit Idaho Process Decl. at 2-3, Macintosh North Dakota Process Decl. at 2-3. They did so working together with four other states in the Qwest region: Montana, New Mexico, Utah and Wyoming. *Id.* This collaborative "multistate" process produced a thorough, extensive record and recommendations, which formed a strong procedural basis for these states' ultimate decisions that Qwest has satisfied the requirements of Section 271. *See generally* Phillips Decl. at 2-31.

The participating states retained John Antonuk of The Liberty Consulting Group ("Liberty") to serve as Facilitator of the multistate process. Among other tasks, the Facilitator was responsible for moderating the collaborative workshops, developing a complete evidentiary record, and producing reports summarizing the evidence and recommending a course of action with respect to any disputed issues. *Id.* at 7. Numerous CLECs, Qwest and state agency staffs, including the staffs of the IPUC, IUB and NDPSC, were active participants in the multistate proceedings. All participants had the ability to propound written discovery and to question witnesses at each workshop. *Id.* The workshop record became a part of the official record of the Section 271 proceeding in each of the participating states. In addition, the Facilitator regularly consulted and met with the participating state agency staffs. *Id.* at 4.

At the conclusion of each workshop the Facilitator submitted a report to each of the participating states reviewing the evidence adduced during the workshop process and setting out his conclusions, including his recommended resolution of any disputed issues. *Id.* at 8. Each state retained independent authority to accept or reject the conclusions or resolutions of the

Facilitator and to resolve each disputed issue on the basis of the record of the multistate workshops. *Id.* A state could do so on its own motion or the motion of a party, through the taking of additional evidence in its own proceedings, or some combination thereof. *Id.*

Colorado Process. The CPUC established three dockets as a part of its process to evaluate Qwest's readiness to enter the interLATA market in Colorado. The first, examining Qwest's compliance with the requirements of Section 271 and the Section 251 compliance of its SGAT, was structured as a series of seven thematically organized workshops. *See* McDaniel Decl. at 8. Care was taken to ensure that every CLEC in Colorado, and every carrier with which Qwest had entered into an interconnection agreement, had notice and a full opportunity to participate. *Id.* at 2. Participants filed comments, affidavits and testimony; engaged in discovery; participated in hearings; and conducted cross-examination of witnesses. *Id.* at 2-3. The majority of issues were resolved collaboratively. Others were not, and certain workshops continued for many months while the issues were explored, the record was developed, and disputed ("impasse") issues were identified. *Id.* at 8-12. The CPUC Staff prepared draft and final reports and recommendations for consideration and decision by the Chairman of the CPUC, who was designated to act as Hearing Commissioner for purposes of these proceedings, and ultimately by the CPUC. Parties were given the opportunity to comment on draft Staff reports before they were finalized and thereafter to comment on the recommended decisions issued by the Hearing Commissioner. *Id.* at 11. On June 13, 2002, the CPUC announced a final decision regarding Qwest's Section 271 compliance.

Second, in November 2000, the CPUC opened a separate docket in order to consider issues related to costs and pricing with respect to UNEs and resale. The CPUC recently completed action in this docket, finding that Qwest's rates, as revised, fully comply with the

TELRIC pricing rules. *Id.* at 35-41. *See also* Section IV, below; Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Colorado ("Thompson Colorado Pricing Decl."), Att. 5, App. A.

A third docket was opened in January 2001 for the purpose of investigating alternative mechanisms for ensuring compliance with Section 271 after authorization was received. The Chairman of the CPUC again was designated to act as Hearing Commissioner; in addition, Professor Phillip Weiser, a former member of the Justice Department's Telecommunications Task Force, was retained to serve as special master and make a recommendation to the CPUC on an appropriate Colorado performance assurance plan ("CPAP"). *Id.* at 41-42. The CPAP process involved numerous meetings and comment periods. Parties also had many opportunities to review and comment on draft and final reports issued by the Special Master, and on the related decisions of the Hearing Commissioner. *Id.* at 41-43. *See also* Declaration of Mark S. Reynolds, Colorado Performance Assurance Plan ("Reynolds CPAP Decl."), Att. 5, App. A.

Idaho Process. The IPUC participated in the multistate process described above. Schmit Decl. at 2-3. The IPUC also independently reviewed the record developed in those proceedings, together with the Facilitator's conclusions and recommendations. *Id.* In addition, following the issuance of each of the Facilitator's reports, the IPUC provided an opportunity for interested parties, including the IPUC staff, to file proposed additional or revised findings of fact, conclusions of law or clarification of disputed issues. *Id.* at 3. The parties also were given the opportunity to participate in oral argument before the IPUC on disputed issues. In this manner, disputed issues unresolved by the Facilitator or that parties wished to continue to pursue were submitted to the IPUC for independent resolution. *Id.*

Separately, the IPUC participated in a collaborative multistate process conducted under the auspices of the ROC to develop a post-entry performance assurance plan. *See id.* at 8. *See also* Declaration of Mark S. Reynolds, Idaho, Iowa, Nebraska and North Dakota Performance Assurance Plans ("Reynolds QPAP Decl."), Att. 5, App. A. The IPUC, with the assistance of Liberty, also conducted comprehensive arbitrations between Qwest and AT&T that produced TELRIC-based rates. *See IPUC Arbitration Order* and *IPUC Final Order on Arbitration*; *Arbitration Approval Order*, Att. 5, App. C. As noted below at Section IV, Qwest has adjusted its core UNE rates in Idaho in a manner designed to comply with the Commission's benchmarking analysis, using Colorado as the benchmark state. *See also* Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Idaho, Att. 5, App. A.

In a decision issued on June 10, 2002, the IPUC concluded "that Qwest has adequately addressed" the requirements of Section 271. *Commission Final Decision on Qwest Corporation's Compliance with Section 271*, Case No. USW-T-00-3 (IPUC June 10, 2002), Att. 5, App. P. Consistent with its commitment to an open and competitive local exchange marketplace, the IPUC stated its intention to "monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open." *Id.* at 9.

Iowa Process. Iowa also participated in the multistate process and independently reviewed the record developed there, together with the Facilitator's conclusions and recommendations. Phillips Decl. at 2-9. The IUB afforded Qwest and any other interested party the opportunity to file comments on each of the Facilitator's recommendations. *Id.* at 31. The IUB also reviewed a final report prepared and filed by Liberty addressing public interest issues relating to Qwest's entry into the in-region interLATA market. In a series of separate written

decisions, the IUB either accepted, modified, or rejected the Facilitator's recommendations and issued its own conclusions resolving, where necessary, any remaining disputed items. In some cases, approval was conditioned on Qwest's implementation of the IUB's rulings (typically involving SGAT revisions) and successful results of any relevant OSS testing. *Id.*

Like the IPUC, the IUB participated in the multistate proceeding addressing the QPAP. *Id.* at 41-42. In addition, the IUB conducted an extensive series of rulemaking-style UNE pricing proceedings. As discussed below at Section IV, Qwest has adjusted its core UNE rates in Idaho, in a manner designed to comply with the Commission's benchmarking analysis, using Colorado as the benchmark state. *See also* Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Iowa, Att. 5, App. A.

In a decision issued on June 12, 2002, the IUB concluded that the record of its proceedings, spanning more than two years, "establishes that Qwest has adequately addressed" the requirements of Section 271 in Iowa. *Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 272 Requirements*, Docket Nos. INU-00-2, SPU-00-1 (IUB June 12, 2002), Att. 5, App. P. Consistent with its commitment to an open and competitive local exchange marketplace, the IUB stated that it would "continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open." *Id.* at 7.

Nebraska Process. The NPSC addressed all 14 competitive checklist items in a series of hearings beginning in the fall of 1998. Sandos Decl. at 2. In a decision issued on April 9, 1999, the NPSC found Qwest in compliance with checklist items 3, 7-12 and 14, as well as with the requirements of Track A and Section 272. The Commission's April 9, 1999, decision obligated Qwest to update the record periodically in order to demonstrate that it remained in

compliance with the requirements of these items. *Id.* at 3-4. Qwest provided periodic performance reports; meanwhile, the NPSC conducted ongoing proceedings concerning Qwest's compliance with these and the remaining criteria under Section 271, including formal evidentiary hearings in which both Qwest and intervening CLECs submitted testimony, exhibits and other evidence. *Id.* These proceedings culminated in a series of decisions issued between September 2001 and May 2002 in which the NPSC concluded that Qwest satisfied the requirements of all fourteen checklist items. *Id.* at 10-11.

Although Nebraska did not formally participate in the multistate proceeding, the NPSC's decisions nonetheless were informed by those proceedings. For purposes of its SGAT review, the NPSC adopted the entire record of the multistate proceedings and all of the reports prepared and issued by the Facilitator, and heard oral argument regarding the Facilitator's findings and conclusions. *Id.* In addition, the NPSC formally participated in the multistate QPAP collaborative, soliciting comments on the Facilitator's Report and conducting oral argument on disputed issues before issuing its QPAP decision. *Id.* Meanwhile, the NPSC recently completed a comprehensive rulemaking proceeding to establish TELRIC-based rates in Nebraska. *See Nebraska Pricing Order*, Att. 5, App. C. As discussed below at Section IV, Qwest has adjusted its core UNE rates in Nebraska, in a manner designed to comply with the Commission's benchmarking analysis, using Colorado as the benchmark state. *See also* Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Nebraska, Att. 5, App. A.

On June 12, 2002, the NPSC issued a decision recommending to the FCC that, "in light of Qwest's achievements toward irreversibly opening its markets to competition," Qwest "be allowed to enter the in-region interLATA long distance market" in Nebraska. *Order*

Approving Qwest's 271 Application and Recommending Approval to the Federal Communications Commission, App'n No. C-1830 (NPSC June 12, 2002), Att. 5, App. P.

North Dakota Process. North Dakota also participated in the multistate process and independently reviewed the record developed there, together with the Facilitator's conclusions and recommendations. Macintosh Decl. at 2-3. Following the issuance of each of the Facilitator's reports, the NDPSC afforded Qwest and any other interested party the opportunity to file comments. *Id.* at 3-4. Thereafter, the NDPSC conducted a series of formal and informal hearings to consider any issues left unresolved in the Facilitator's reports. *Id.* at 3-11. The NDPSC then issued consultative reports in which it adopted the Facilitator's recommendation on the majority of outstanding issues and made its own rulings on the rest. *Id.* Thus, all impasse issues were resolved and the NDPSC determined that Qwest was in compliance with the requirements of Section 271.

The NDPSC, with the assistance of Liberty, conducted comprehensive arbitrations between Qwest and AT&T that produced TELRIC-based rates. *See AT&T Communications of the Midwest Inc. Interconnection Arbitration Application*, Case No. PU-453-96-497, Order Approving Arbitrated Agreement, at 5-6 (ND PSC June 23, 1997), Att. 5, App. C. As discussed below at Section IV, Qwest has adjusted its core UNE rates in Nebraska, in a manner designed to comply with the Commission's benchmarking analysis, using Colorado as the benchmark state. *See also* Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in North Dakota, Att. 5, App. A.

On June 13, 2002, the NDPSC concluded that Qwest had addressed all pertinent issues with respect to the competitive checklist and other applicable requirements in connection with Section 271. The thoroughness of the NDPSC's process in conjunction with the multistate

process, and the extensive involvement of CLECs in both processes, dictate that the FCC should extend great deference to the conclusions of the NDPSC that Qwest has met all the requirements of Section 271.

All five of the application states have concluded, after lengthy deliberation upon a comprehensive record, that Qwest has satisfied the requirements of Section 271 (including the separate affiliate requirements of Section 272). Their findings and conclusions should be accorded substantial weight. *See New York 271 Order*, 15 FCC Rcd at 3975.

II. QWEST IS ELIGIBLE TO SEEK INTERLATA RELIEF UNDER SECTION 271(C)(1)(A)

Qwest unquestionably satisfies Track A in Colorado, Idaho, Iowa, Nebraska and North Dakota. *See* Declaration of David Teitzel, State of Local Exchange Competition, Track A and Public Interest Requirements ("Teitzel Decl."), Att. 5, App. A. Thousands of residential and business customers in all five of the application states currently obtain local telephone service from facilities-based CLECs, and several CLECs are serving both residential and business customers over their own facilities, consistent with the language and intent of Section 271. 4/ *See generally* Teitzel Decl.

The Commission has interpreted Track A to require a BOC to demonstrate four things: (1) that it has one or more binding agreements with CLECs that have been approved under Section 252 of the Act; (2) that it provides access and interconnection to unaffiliated competing providers of telephone exchange service; (3) that these competitors collectively provide telephone exchange service to residential and business subscribers; and (4) that these competing providers offer telephone exchange service either exclusively or predominantly over

4/ *See* 47 U.S.C. § 271(c)(1)(A). A CLEC's "own facilities" includes the use of leased unbundled network elements (UNEs). *See Michigan 271 Order*, 12 FCC Rcd at 20,598 ¶ 101.

their own telephone service facilities (which include UNEs they lease from Qwest) or via resale. *See Michigan 271 Order*, 12 FCC Rcd at 20,577-99, ¶¶ 62-104.

Binding Agreements Under Section 252. Qwest has "entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities . . . ." 47 U.S.C. § 271(c)(1)(A). No party challenged Qwest's compliance with this first element in any of the state proceedings.

> **Colorado:** As of March 31, 2002, the CPUC had approved 102 interconnection agreements -- 79 wireline and 23 resale, wireless, paging, and EAS. Another 29 agreements were awaiting approval. *See* Teitzel Decl. at 11 and Exh. DLT-Track A/PI-CO-1 (Colorado Wholesale Volumes Data Report). *See also* Att. 5, App. L (Qwest's state-approved interconnection agreements with CLECs in Colorado).
>
> **Idaho:** As of March 31, 2002, the IPUC had approved 93 interconnection agreements -- 47 wireline and 46 resale, wireless, paging, and EAS. Another nine agreements were awaiting approval. *See* Teitzel Decl. at 11 and Exh. DLT-Track A/PI-ID-1 (Idaho Wholesale Volumes Data Report). *See also* Att. 5, App. L (Qwest's state-approved interconnection agreements with CLECs in Idaho).
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> **Iowa:** As of March 31, 2002, the IUB had approved 122 interconnection agreements -- 68 wireline and 54 resale, wireless, paging, and EAS. Another three agreements were awaiting approval. *See* Teitzel Decl. at 11 and Exh. DLT-Track A/PI-IA-1 (Iowa Wholesale Volumes Data Report). *See also* Att. 5, App. L (Qwest's state-approved interconnection agreements with CLECs in Iowa).
>
> **Nebraska:** As of March 31, 2002, the NPSC had approved 79 interconnection agreements -- 43 wireline and 36 resale, wireless, paging, and EAS. Another 18 agreements were awaiting approval. *See* Teitzel Decl. at 12 and Exh. DLT-Track A/PI-NE-1 (Nebraska Wholesale Volumes Data Report). *See also* Att. 5, App. L (Qwest's state-approved interconnection agreements with CLECs in Nebraska).
>
> **North Dakota:** As of March 31, 2002, the NDPSC had approved 61 interconnection agreements -- 36 wireline and 25 resale, wireless, paging, and EAS. Another nine agreements were awaiting approval. *See* Teitzel Decl. at 12 and Exh. DLT-Track A/PI-ND-1 (North Dakota Wholesale Volumes Data

Report). *See also* Att. 5, App. L (Qwest's state-approved interconnection agreements with CLECs in North Dakota).

Access to Unaffiliated Competing Providers. Qwest is providing access to UNEs and interconnection facilities to a significant number of unaffiliated competing providers of telephone exchange service in all five of the application states. Thus, Qwest meets the second criterion of Track A. No party challenged Qwest's compliance with this second element in any of the state proceedings. 5/

Colorado: As of March 31, 2002, Qwest was providing 49,532 stand-alone unbundled loops to 16 CLECs and 79,406 UNE-Ps to nine CLECs in Colorado. *See* Teitzel Decl. at 14 and Exh. DLT-Track A/PI-CO-1 (Colorado Wholesale Volumes Data Report); *see also id.* Exh. DLT-Track A/PI-CO-3. Qwest also was providing 589 collocations and 194,102 local interconnection trunks in order for CLECs to access and interconnect with Qwest's network. *Id.*

Idaho: As of March 31, 2002, Qwest was providing 4,417 stand-alone unbundled loops to four CLECs and 11,438 UNE-Ps to seven CLECs in Idaho. *See id.* and Exh. DLT-Track A/PI-ID-1 (Idaho Wholesale Volumes Data Report); *see also id.* Exh. DLT-Track A/PI-ID-3. Qwest also was providing 50 collocations and 10,820 local interconnection trunks in order for CLECs to access and interconnect with Qwest's network. *Id.*

Iowa: As of March 31, 2002, Qwest was providing 27,798 stand-alone unbundled loops to eight CLECs and 110,471 UNE-Ps to six CLECs in Iowa. *See id.* Exh. DLT-Track A/PI-IA-1 (Iowa Wholesale Volumes Data Report); *see also id. and* Exh. DLT-Track A/PI-IA-3. Qwest also was providing 200 collocations and 29,710 local interconnection trunks in order for CLECs to access and interconnect with Qwest's network. *Id.* at 14-15.

Nebraska: As of March 31, 2002, Qwest was providing 17,193 stand-alone unbundled loops to five CLECs and 4,446 UNE-Ps to five CLECs in Nebraska. *See id.* at 15 and Exh. DLT-Track A/PI-NE-1 (Nebraska Wholesale Volumes Data Report); *see also id.* at 15 and Exh. DLT-Track A/PI-NE-3. Qwest also was providing 120 collocations and 36,046 local

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5/ Comprehensive lists of unaffiliated CLECs currently active in each state are attached to the Teitzel Declaration. *See* Teitzel Decl. Exhs. DLT-Track A/PI-CO-3 (Colorado); DLT-Teack A/PI-ID-3 (Idaho); DLT-Track A/PI-IA-3 (Iowa); DLT-Track A/PI-NE-3 (Nebraska); and DLT-Track A/PI-ND-3 (North Dakota).

interconnection trunks in order for CLECs to access and interconnect with Qwest's network. *Id.* at 15.

North Dakota: As of March 31, 2002, Qwest was providing 13,181 stand-alone unbundled loops to seven CLECs and 21,149 UNE-Ps to five CLECs in North Dakota. *See id.* at 15 and Exh. DLT-Track A/PI-ND-1 (North Dakota Wholesale Volumes Data Report); *see also id.* Exh. DLT-Track A/PI-ND-3. Qwest also was providing 24 collocations and 1,176 local interconnection trunks in order for CLECs to access and interconnect with Qwest's network. *Id.* at 15.

Competitive Service to Residential and Business Subscribers. CLECs are collectively providing telephone exchange service to significant numbers of residential and business subscribers in each of the five application states. In fact, several individual CLECs are simultaneously providing business *and* residential services in numerous service areas in each state. Specifically, CLECs such as AT&T in Colorado, Cox Communications in Iowa and Nebraska, and McLeodUSA in all five states, serve both residential and business customers. *See* Teitzel Decl. at 16 and Exhs. DLT-Track A/PI-CO-4 (Colorado), DLT-Track A/PI-ID-4 (Idaho), DLT-Track A/PI-IA-4 (Iowa), DLT-Track A/PI-NE-4 (Nebraska), DLT-Track A/PI-CO-4 (North Dakota) (Profiles of Selected Facilities-Based CLECs). 6/

Qwest itself can measure and track the number of stand-alone unbundled loops, UNE-P lines, resale lines, local interconnection service ("LIS") trunks and ported numbers that it provisions to CLECs. However, Qwest must rely on estimates to calculate the number of access lines served *via* CLEC-owned facilities. Consistent with other Section 271 applications previously approved by this Commission, Qwest uses both E-911 database listings and LIS

6/ In Idaho, Cricket Communications, a subsidiary of Leap Wireless International, is aggressively positioning its PCS wireless service as an alternative to traditional landline service. *Id. See First Louisiana 271 Order*, 13 FCC Rcd at 6290, ¶ 72 (Section 271 "does not preclude the Commission from considering the presence of a PCS provider in a particular state as a 'facilities-based competitor.'").

trunks to estimate the number of CLEC access lines in service in each state. As shown below, each estimation method yields comparable results.

> **Colorado:** Based on data from the E-911 listing database -- which contains 572,980 listings (399,888 business and 173,092 residential) for lines served by CLECs *via* stand-alone unbundled loops and CLEC-owned facilities -- Qwest estimates that, as of March 31, 2002, CLECs had 694,527 access lines in service in Colorado. *See* Teitzel Decl. at notes 46-48 and accompanying chart. Based on the number of LIS trunks in service in Colorado -- 194,102 -- Qwest estimates that, as of March 31, 2002, CLECs had 655,328 access lines in service in Colorado. *See id.* at note 50 and accompanying chart.
>
> **Idaho:** Based on data from the E-911 listing database -- which contains 40,577 listings (38,814 business and 1,763 residential) for lines served by CLECs *via* stand-alone unbundled loops and CLEC-owned facilities -- Qwest estimates that, as of March 31, 2002, CLECs had 61,209 access lines in service in Idaho. *See id.* at notes 46-48 and accompanying chart. Based on the number of LIS trunks in service in Idaho -- 10,820 -- Qwest estimates that, as of March 31, 2002, CLECs had 50,387 access lines in service in Idaho. *See id.* at note 50 and accompanying chart.
>
> **Iowa:** Based on data from the E-911 listing database -- which contains 73,668 listings (33,340 business and 40,328 residential) for lines served by CLECs *via* stand-alone unbundled loops and CLEC-owned facilities -- Qwest estimates that, as of March 31, 2002, CLECs had 200,237 access lines in service in Iowa. *See id.* at notes 46-48 and accompanying chart. Based on the number of LIS trunks in service in Iowa – 29,710 -- Qwest estimates that, as of March 31, 2002, CLECs had 208,272 access lines in service in Iowa. *See id.* at note 50 and accompanying chart.
>
> **Nebraska:** Based on data from the E-911 listing database -- which contains 163,296 listings (71,119 business and 92,177 residential) for lines served by CLECs *via* stand-alone unbundled loops and CLEC-owned facilities -- Qwest estimates that, as of March 31, 2002, CLECs had 179,179 access lines in service in Nebraska. *See id.* at notes 46-48 and accompanying chart. Based on the number of LIS trunks in service in Nebraska -- 36,046 -- Qwest estimates that, as of March 31, 2002, CLECs had 115,010 access lines in service in Nebraska. *See id.* at note 50 and accompanying chart.
>
> **North Dakota:** Based on data from the E-911 listing database -- which contains 15,963 listings (9,379 business and 6,584 residential) for lines served by CLECs *via* stand-alone unbundled loops and CLEC-owned facilities -- Qwest estimates that, as of March 31, 2002, CLECs had 44,908 access lines in service in North Dakota. *See id.* at notes 46-48 and accompanying chart. Based on the number of LIS trunks in service in North Dakota -- 1,176 --