Attachment 1

WILLIAM A MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

BRIAN C McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

June 27 2002

All Parties to the Docket

Re **Qwest's Application under Section 271**
Docket No RT-00000F-02-0271 [Section 252]
Docket No T-00000A-97-0238 [Section 271]

To All Parties

Commissioner Spitzer s letters dated June 17 2002 and June 26 2002 reaffirm my belief that the matters before us are of the utmost importance and prudence requires at the very least a close examination of the allegations of coercion It is clear to me that continuing with our Section 271 review must be suspended until the Commission can determine to what extent the agreements in question may have compromised the entire Section 271 review

What makes this situation unique is the subversive nature of these actions and their potential to taint the public deliberative Section 271 review process Who knows what the outcome of the proceedings would have been if ALL parties of interest had fully participated? If we determine that these allegations even if true did not significantly alter the outcome of these proceedings then we should move forward and complete the Section 271 review process based on a fully developed record However if it is found after reviewing the evidence, that a different outcome may have resulted from full participation then the Commission will need to consider re opening the record on many of the issues previously decided in these dockets If the we are ultimately unable to clear up the cloud that these allegations created, the possibility of restarting this process will also have to be considered

I estimate that the Commission over the last 3 years has expended hundreds of thousands of dollars in resources to process this application and I find it extremely frustrating that the hard work of all of the individuals may have been wasted because of Qwest s possible attempts to skew the process Before we continue with this process and further commit valuable Commission resources the question posed by Commissioner Spitzer must be answered fully and to the satisfaction of the Commission

I therefore must join Commissioner Spitzer in taking the position that any further movement by the Commission on Qwest s Section 271 application must be suspended until the issues related to the compromised agreements are resolved

Sincerely

Jim Irvin
Commissioner

CC William A Mundell Chairman
Marc Spitzer Commissioner

Attachment 2

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147

Greg Scott	**Chair**
Edward Garvey	**Commissioner**
Marshall Johnson	**Commissioner**
LeRoy Koppendrayer	**Commissioner**
Phyllis A. Reha	**Commissioner**

In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements	))))	Docket No. P-421/C-02-197

SECOND AMENDED VERIFIED COMPLAINT

Expedited Proceeding Requested

Temporary Relief Requested

The Minnesota Department of Commerce ("Department") brings this Verified Complaint before the Minnesota Public Utilities Commission (the "Commission") against Qwest Corporation ("Qwest"), seeking relief for Qwest's violation of its obligations under state and federal law. Qwest's unlawful conduct has hindered and continues to hinder competition in the local exchange markets in Minnesota. In support of this Complaint, the Department alleges:

PARTIES

1. Under Minn. Stat. § 216A.07, the Department is charged with investigating and enforcing Chapter 237 and Commission orders made pursuant to that chapter. The Department's local address in Minnesota is Golden Rule Building, 85 East 7th Place, Suite 500, St. Paul, MN 55155.

2. The Department is represented in this proceeding by its attorneys:

Mike Hatch
Attorney General
State of Minnesota

Steven H. Alpert
Assistant Attorney General
525 Park Street, #200
St. Paul, Minnesota 55103-2106
(651) 296-3258 (telephone)
(651) 282-2525 (TTY)

3. Respondent Qwest is a Delaware corporation with its principal place of business in Denver, Colorado, with offices in Minnesota at 200 South Fifth Street, Minneapolis, Minnesota. Qwest provides switched local exchange service in a number of Minnesota exchanges, and is regulated by the Commission under Minn. Stat. ch. 237 as a "telephone company." Minn. Stat. § 237.01, subd. 2. As a major provider of local exchange service in Minnesota, Qwest controls approximately two million out of the approximately two million seven hundred thousand telephone lines in Minnesota.

4. The Department believes that Qwest is represented in Minnesota by its attorney:

Jason Topp
Qwest Corporation
Law Department
200 South 5th Street, Room 395
Minneapolis, MN 55402
(612) 672-8905 (telephone)
(612) 672-8911 (facsimile)

JURISDICTION

5. The Department's investigation into certain agreements entered into by Qwest, and described more particularly below, establishes that Qwest's behavior violates federal and state law.

6. The Commission has jurisdiction over this Complaint pursuant to 47 U.S.C. §§ 252(e) (authority of state commissions to enforce interconnection agreements), 251(c)(2) (duty of incumbent carriers to interconnect with CLECs); Minn. Stat. §§ 237.081 (Commission investigations); and, 237.462 (competitive enforcement).

OVERVIEW

Qwest's Legal Obligations

7. Qwest is the successor in interest to U S WEST Communications, Inc. ("U S WEST"). At all times relevant to this complaint, either U S WEST or its successor Qwest operated as an incumbent local exchange carrier in Minnesota.

8. The Department is informed and believes and on this basis alleges that, upon its merger with U S WEST, Qwest assumed the obligations and the benefits of every agreement described in this complaint to which U S WEST was a party. For purposes of this complaint, both Qwest and U S WEST are referred to as Qwest.

9. As an incumbent local exchange carrier, Qwest has a number of legal duties set forth in 47 U.S.C. § 251(c). Among those duties are:

a. The duty to negotiate in good faith the particular terms and conditions of agreements for interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and collocation. 47 U.S.C. § 252(c)(1).

b. The duty to provide interconnection with Qwest's network on rates, terms and conditions that are just, reasonable and non-discriminatory. 47 U.S.C. § 251(c)(2)(D).

c. The duty to provide nondiscriminatory access to network elements on an unbundled basis on rates, terms and conditions that are just, reasonable and nondiscriminatory. 47 U.S.C. § 251(c)(3).

10. Pursuant to 47 U.S.C. § 252(a), Qwest may negotiate the terms of any agreement to provide interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and collocation with the CLEC requesting such items or services. The agreement entered into by Qwest "shall be submitted to the State commission under subsection (e) of this section." 47 U.S.C. § 252(a)(1).

11. Qwest and numerous CLECs are parties to Interconnection Agreements ("ICAs") which have been approved at various times by this Commission pursuant to 47 U.S.C. § 252(e).

12. Qwest is required to make available any interconnection, service, or network element provided under an agreement approved by this Commission pursuant to 47 U.S.C. § 252(e) to which Qwest is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C. § 252(i). This requirement is also known as the "most favored nation" or "pick and choose" rule.

13. In the *Local Competition First Report and Order*, the FCC explained the importance of the filing requirement in 47 U.S.C. § 252(a)(1) and its relation with 47 U.S.C. § 252(i):

> As a matter of policy, moreover, we believe that requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest. In particular, preexisting agreements may include provisions that violate or are inconsistent with the pro-competitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). Requiring all contracts to be filed also

> limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i). In addition, we believe that having the opportunity to review existing agreements may provide state commissions and potential competitors with a starting point for determining what is "technically feasible" for interconnection.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, para. 167 (1996) (emphasis in original).

The Secret Agreements

14. The Department is conducting an investigation into potential anti-competitive conduct by Qwest, in part to determine whether Qwest has engaged in a practice of entering into secret agreements with some CLECs that violate Qwest's obligations under 47 U.S.C. § 251(c) and/or 47 U.S.C. § 252(a)(1).

15. On June 20, 2001 the Department sent an information request to Qwest asking it to produce every agreement with a CLEC not filed with the Commission entered into by Qwest over the last five years. After discussions with Qwest, the scope of Qwest's production was narrowed to agreements entered into on or after January 1, 2000.

16. The facts set forth below have been determined by the Department based on the agreements and information provided by Qwest in Docket P421/DI-01-814.

17. The Department's investigation revealed that Qwest has entered into numerous secret agreements with CLECs to provide interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation and/or collocation to the CLEC (the "Secret Agreements"). The Secret Agreements are discussed in more detail below and attached as exhibits to this complaint.

18. The Secret Agreements either modify or augment the terms and conditions set forth in the ICAs between Qwest and the CLECs that are party to them.

19. 47 U.S.C. § 242(a)(1) requires that these Secret Agreements be submitted for Commission approval pursuant to 47 U.S.C. § 252(e).

20. Qwest has not submitted the Secret Agreements for Commission approval pursuant to 47 U.S.C. § 252(e).

21. In addition to failing to submit the Secret Agreements to this Commission for approval, Qwest included confidentiality provisions in the agreements that, in many cases, precluded access to the Secret Agreements by other CLECs, the Department, or this Commission to the Secret Agreements.

22. The Department is informed and believes and on this basis alleges that the terms of these Secret Agreements described below do not appear in any ICAs approved by the Commission under 47 U.S.C. § 252(e), to which Qwest is a party.

23. As a result, the terms of these Secret Agreements described below remain unknown to the CLECs that are not party to these agreements and are not available for adoption by other CLECs pursuant to 47 U.S.C. § 252(i).

24. By entering into the Secret Agreements, Qwest is providing discriminatory treatment in favor of the CLECs that are party to these agreements and to the detriment of CLECs that are not.

25. Because these Secret Agreements either modify or create entirely new terms and conditions of interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation and/or collocation, Qwest's failure to make these terms generally available to all CLECs violates 47 U.S.C. § 251(c).

26. As set forth in greater detail below, the ongoing and repeated behavior of Qwest in entering into these secret agreements was, and is, anti-competitive and in violation of federal and state law.

SPECIFIC FACTUAL ALLEGATIONS

THE ESCHELON AGREEMENTS

27. Today and at all times described below, Eschelon Telecom, Inc. and/or its predecessor in interest, Advanced Telecommunications, Inc. (collectively, "Eschelon") is and was licensed and certificated to operate as a CLEC in Minnesota.

28. Today and at all times described below, Eschelon is and was party to an ICA with Qwest that was approved by the Commission under 47 U.S.C. § 252(e).

29. Between February 28, 2000 and July 31, 2001, Qwest entered into a series of secret agreements with Eschelon.

Eschelon Agreement I

30. On February 28, 2000 Qwest entered into the *Confidential/Trade Secret Stipulation Between ATI and U S WEST* ("Eschelon Agreement I"). A true and correct copy of Eschelon Agreement I provided to the Department by Qwest is attached as Exhibit 1 to this complaint.

31. As set forth more specifically below, Eschelon Agreement I sets out terms and conditions for reciprocal compensation, interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit Eschelon Agreement I to the Commission for approval under 47 U.S.C. § 252(e).

32. To date, Qwest has not submitted Eschelon Agreement I to the Commission for approval under 47 U.S.C. § 252(e).

33. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

34. In abrogation of its duty of non-discrimination and in defiance of the requirements of 47 U.S.C. § 252(a)(1), Qwest included a confidentiality clause in Eschelon Agreement I that prevented other CLECs, the Commission and the Department from discovering the existence of the agreement and the specific terms of interconnection and access to unbundled network elements described below.

35. The confidentiality clause in Paragraph 1 of Eschelon Agreement 1 reads as follows:

> The terms of this agreement are confidential, contain trade secret information, and shall not be disclosed unless pursuant to a lawful Order compelling such disclosure. In such event that production is compelled, neither Party shall disclose the terms of this agreement without first notifying the other Party.

36. Eschelon Agreement I provides in Paragraph 7 as follows:

> [Eschelon] has asserted that USWC must pay reciprocal compensation for internet related terminating traffic under its Interconnection Agreements and under applicable state and federal law. USWC has asserted that it has no legal obligation to pay reciprocal compensation for such traffic. Notwithstanding these differences and without waiving their positions, the parties agree that for settlement purposes that reciprocal compensation for terminating internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed to date by USWC.

37. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provision as Paragraph 7 of Eschelon Agreement I. Qwest did not identify any such ICA.

38. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains a term giving the CLEC the ability to obtain the most favorable rates and terms for reciprocal compensation for terminating internet traffic contained in an agreement executed as of February 28, 2000 by U S WEST.

39. By providing this term to Eschelon and to no other CLEC, Qwest discriminated against other CLECs and violated 47 U.S.C. § 251(c).

40. Eschelon Agreement I provides in Paragraph 10 as follows:

> With respect to termination liability assessments (TLA) and while the Minnesota Commission continues to have an open docket on this issue, USWC agrees to continue to suspend such assessments in Minnesota when a USWC customer converts to an ATI customer on a resale basis and to credit ATI with any such TLA payments ATI has made in Minnesota.

41. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provision as Paragraph 10 of Eschelon Agreement I. Qwest did not identify any such ICA.

42. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same term as Eschelon Agreement I.

43. By providing this term to Eschelon and to no other CLEC, Qwest discriminated against other CLECs and violated 47 U.S.C. § 251(c).

44. Eschelon Agreement I provides in Paragraphs 11 and 12 as follows:

> USWC agrees to dedicate Aimee Croatt as a Coach and locate her at ATI's offices at 511 11th Avenue South in Minneapolis for a period of at least six months. If Ms. Croatt is not available for assignment, USWC will provide another Coach who is knowledgeable and experienced in working with all the different groups and functions within USWC related to provisioning. ATI must approve the assignment of any Coach other than Ms. Croatt. USWC will also utilize a service delivery coordinator (SDC) to assist the Coach. The parties recognize that the Coach and the SDC will need to complete training before the requirements in paragraph 11 and paragraph 12 can be fully implemented. All properly input orders that, for one reason or another, are not flowing through the accepted process would be the responsibility of the Coach or SDC. The Coach would have access to all USWC's systems and would work within the USWC organization and using USWC's processes to resolve issues as quickly as possible. The Coach would track the reasons for problem orders to aid in defining and refining current processes for both USWC and ATI. ATI will provide any facilities requested by USWC for the Coach. ATI has also indicated that it will work cooperatively with

> USWC to identify and pay the incremental and extraordinary costs associated with the dedicated provisioning team.
>
> At the appropriate time, USWC agrees to dedicate a provisioning team to work with the Coach and handle all interaction with ATI on order processing. After spending two months on site with the ATI provisioning team, the Coach and/or the SDC should have the criteria and information available to make a decision as to how many U S West provisioners will be needed to oversee the ATI orders. The provisioning team will be physically located at the 511 11th Avenue South location. The parties agree to evaluate the dedicated provisioning team requirement in 12 months after the effective date of this agreement.

45. The Department is informed and believes and on this basis alleges that the dedicated provisioning team referred to in these paragraphs is still in operation at Eschelon.

46. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provision as Paragraphs 11 and 12 of Eschelon Agreement I. In response, Qwest identified only Section 2.10 to Amendment 8 to the Eschelon ICA.

47. On December 6, 2000 Eschelon submitted Amendment 8 to its ICA with Qwest to the Commission for approval pursuant to 47 U.S.C. § 252(e). Section 2.10 of the amendment says, "For at least a one-year period, Eschelon agrees to pay Qwest for the services of a Qwest dedicated provisioning team to work on Eschelon's premises." This Section 2.10 does not obligate Qwest to provide a dedicated provisioning team and does not set out, in detail, the scope of the provisioning team's work as set forth in Eschelon Agreement I.

48. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the terms set forth in Paragraphs 11 and 12 of Eschelon Agreement I.

49. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

50. Eschelon Agreement I provides in Paragraph 14 for an extensive dispute resolution agreement that creates additional ways for resolving disputes between Qwest and Eschelon beyond the methods set forth in their ICA. The preamble to Paragraph 14 reads as follows:

> In the event of future disputes between the Parties, in addition to the dispute resolution mechanism provided under the Interconnection Agreement, the Parties agree to use the following alternative dispute resolution procedures as their preferred remedy; provided, however, that in the event the negotiations referenced below do not resolve the dispute within thirty (30) Business Days of the initial written request, unless the Parties mutually agree to a different time frame. Either party may elect, before filing a claim or response in arbitration (as the case may be) to submit an otherwise arbitrable dispute to the Commission, the FCC or a court of appropriate jurisdiction. [sic]

51. Paragraph 14 of Eschelon Agreement I goes on to set out very specific parameters for negotiations, arbitrations, expedited arbitration procedures and allocation of cost.

52. Dispute resolution provisions are an essential part of an ICA because they define how the parties will settle disputes that arise over interconnection, unbundled network elements, and other telecommunication products and services that Qwest is required to provide under 47 U.S.C. § 251.

53. The October 1, 2001 *Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services Provided by Qwest Corporation in the State of Minnesota* ("SGAT") contains 14 paragraphs and subparagraphs devoted to dispute resolution (Paras. 5.18 *et seq.*). In addition, dispute resolution is mentioned in 23 paragraphs outside of the 14 devoted to the topic.

54. The SGAT does not contain all the terms and conditions found in Eschelon Agreement I. For example, SGAT Paragraph 5.18.3.2 states "There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and

determination of the dispute." Paragraph 14 of Eschelon Agreement I provides for written discovery and one oral deposition.

55. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provision as Paragraph 14 of Eschelon Agreement I. Qwest did not identify any such ICA.

56. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same dispute resolution terms found in Paragraph 14 of Eschelon Agreement I.

57. By providing these terms to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

Eschelon Agreement II

58. On July 21, 2000 Qwest entered into the *Trial Agreement* with Eschelon ("Eschelon Agreement II"). Eschelon Agreement II was, by its terms, made effective as of May 1, 2000. A true and correct copy of Eschelon Agreement II provided to the Department by Qwest is attached as Exhibit 2 to this complaint.

59. As set forth more specifically below, Eschelon Agreement II sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit Eschelon Agreement II to the Commission for approval under 47 U.S.C. § 252(e).

60. To date, Qwest has not submitted Eschelon Agreement II to the Commission for approval under 47 U.S.C. § 252(e).

61. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

62. In abrogation of its duty of non-discrimination and in defiance of the requirements of 47 U.S.C. § 252(a)(1), Qwest included a confidentiality clause in Eschelon Agreement II that prevented other CLECs, the Commission and the Department from discovering the existence of the agreement and the specific terms of interconnection and access to unbundled network elements described below.

63. The confidentiality clause in Paragraph 9 of Eschelon Agreement II reads as follows:

> **CONFIDENTIALITY, PRESS RELEASES**. The terms of this Agreement are confidential, contain trade secret information and shall not be disclosed unless pursuant to a lawful Order compelling such disclosure. In such event that production is compelled, neither Party shall disclose the terms of this Agreement without first notifying the other Party. Neither Party shall use the other's name in any press releases, sales promotions, or other publicity matters relating to the Trial or the Services without written approval from the other Party. Nothing in this section in any way affects or limits rights and obligations of the Parties relating to confidentiality and nondisclosure under other agreements with one another.

64. Eschelon Agreement II sets out, in full detail, all the terms and conditions of providing the dedicated provisioning team agreed to and described in Eschelon Agreement I. For example, Paragraph 3 requires Eschelon to pay Qwest $9,206 each month for the dedicated provisioning team over the term of the agreement.

65. The specific responsibilities for the dedicated provisioning team, Eschelon's commitments for the team and Qwest's commitments for the team are set out in more than 30 paragraphs and subparagraphs in Attachment 1 to Eschelon Agreement II.

66. The Department is informed and believes and on this basis alleges that the primary responsibility of the dedicated provisioning team is to help Eschelon obtain access to unbundled network elements.

67. Although Eschelon Agreement II is labeled a "trial" agreement that, by its terms, expired on May 1, 2001, the Department is further informed and believes and on this basis alleges that the dedicated provisioning team remains in place at Eschelon today and continues to operate on the same or similar terms and conditions as set forth in Eschelon Agreement II.

68. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as Eschelon Agreement II. In response, Qwest identified only Section 2.10 of Amendment 8 to the Eschelon ICA.

69. Section 2.10 of Amendment 8 to the Eschelon ICA says, "For at least a one-year period, Eschelon agrees to pay Qwest for the services of a Qwest dedicated provisioning team to work on Eschelon's premises." This Section 2.10 does not obligate Qwest to provide a dedicated provisioning team and does not set out, in detail, the scope of work set forth in Eschelon Agreement II.

70. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same terms found in Eschelon Agreement II.

71. By providing these terms to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

Eschelon Agreement III

72. On November 15, 2000 Qwest entered into a *Confidential Agreement* ("Eschelon Agreement III"). A true and correct copy of Eschelon Agreement III provided to the Department by Qwest is attached as Exhibit 3 to this complaint.

73. As set forth more specifically below, Eschelon Agreement III sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C.

§ 252(a)(1) requires Qwest to submit Eschelon Agreement III to the Commission for approval under 47 U.S.C. § 252(e).

74. To date, Qwest has not submitted Eschelon Agreement III to the Commission for approval under 47 U.S.C. § 252(e).

75. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

76. Eschelon Agreement III provides in Section 2 as follows:

> Beginning in 2001 and continuing through the end of 2005, the Parties will agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, anticipated business issues, and issues related to the Parties' Interconnection Agreements, Implementation Plan, and other agreements. The meetings will be attended by executives from both companies at the vice-president and/or above level.

77. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as Section 2 of Eschelon Agreement III. In response, Qwest identified only Section 1.3 of Amendment 8 to the Eschelon ICA.

78. Section 1.3 of Amendment 8 to the Eschelon ICA says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." This Section 1.3, however, does not require Qwest to attend quarterly meetings and does not require Qwest to provide an executive from the vice-president or above level for such meetings.

79. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same term as Eschelon Agreement III.

80. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

81. Eschelon Agreement III provides in Section 3 for specific, six-level escalation procedures for resolving any and all business issues between them, including ICA issues. The preamble to Section 3 reads as follows:

> The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frame to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; (4) grant to one another, at the request of the other party, reasonable extensions of time at Levels 1 and 2 of the dispute resolution process to facilitate a business resolution; and (5) complete Levels 1, 2 and 3 of dispute resolution before seeking resolution through arbitration or the courts.

82. Under the escalation procedures set out in Eschelon Agreement III, Level 1 involves Vice Presidents. Level 2 involves Senior Vice Presidents. Level 3 involves CEOs. Level 4 is arbitration. Level 5 is a return to CEOs, and Level 6 is litigation in state or federal courts. Levels 1, 2, 3 and 5 are assigned 10 business days for completion. Level 4 allows either party to request expedited arbitration to be completed within 90 days.

83. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same escalation provisions as Section 3 of Eschelon Agreement III. In response, Qwest identified only Section 1.3 of Amendment 8 to the Eschelon ICA.

84. Section 1.3 of Amendment 8 to the Eschelon ICA says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." This Section 1.3, however, does not

set out the specific escalation steps described in Eschelon Agreement III and certainly does not commit Vice Presidents, Sr. Vice Presidents or Qwest's CEO to participate in issue escalations.

85. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same escalation process as Eschelon Agreement III.

86. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

87. Eschelon Agreement III further provides in Section 3 that if a dispute reaches Level 6:

> In the event that either party files an action in court, the parties waive (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent such damages are reasonably foreseeable and acknowledging each party's duty to mitigate damages.

88. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same waiver provisions as Section 3 of Eschelon Agreement III. In response, Qwest identified only Section 1.3 of Amendment 8 to the Eschelon ICA.

89. Section 1.3 of Amendment 8 to the Eschelon ICA says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." Section 1.3 does not address any of the waiver issues addressed in Section 3 of Eschelon Agreement III.

90. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same waiver provisions as this term of Eschelon Agreement III.

91. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

Eschelon Agreement IV

92. On November 15, 2000 Qwest entered into a *Confidential Amendment to Confidential/Trade Secret Stipulation* ("Eschelon Agreement IV"). Eschelon Agreement IV amends and adds terms to Eschelon Agreement I. A true and correct copy of Eschelon Agreement IV provided to the Department by Qwest is attached as Exhibit 4 to this complaint.

93. As set forth more specifically below, Eschelon Agreement IV sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit Eschelon Agreement IV to the Commission for approval under 47 U.S.C. § 252(e).

94. In particular, Eschelon Agreement IV describes a complex "consulting" arrangement that has the net effect of reducing the cost of unbundled network elements and related telecommunications services to Eschelon as compared to other CLECs.

95. To date, Qwest has not submitted Eschelon Agreement IV to the Commission for approval under 47 U.S.C. § 252(e).

96. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

97. In abrogation of its duty of non-discrimination and in defiance of the requirements of 47 U.S.C. § 252(a)(1), Qwest included a confidentiality clause in Eschelon Agreement IV that prevented other CLECs, the Commission and the Department from discovering the existence of the agreement and the specific cost reductions and terms of interconnection and access to unbundled network elements described below.

98. The confidentiality clause in Paragraph 9 of Eschelon Agreement IV reads as follows:

> The Parties agree that they will keep the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Confidential Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Agreement to any person, judicial or administrate [sic] agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will (1) first notify Qwest of any obligation to disclose some or all of this Confidential Agreement; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this Confidential Agreement, and (3) apply for confidential treatment of this Confidential Agreement. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Agreement and the negotiations, and all matters related to these matters shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

99. Eschelon Agreement IV provides in Paragraph 3 as follows:

> Eschelon shall provide to Qwest consulting and network-related services, including but not limited to processes and procedures relating to wholesale service quality for local exchange services ("Services"). These Services will address numerous items, including loop cutover and conversion, repair, billing and other items agreed upon by the Parties. The Services may include all lines of business and methods of local market entry used by Eschelon. Eschelon agrees to utilize knowledgeable and experienced personnel for the Services. Eschelon further agrees to assign, upon request, up to two full time representatives dedicated to working with the Qwest account team or other Qwest organizations to facilitate handling of provisioning issues. The parties agree to meet together (via telephone, live conference, or otherwise) as necessary to facilitate provisioning of the Services. Executives from both companies agree to address and discuss the progress of the Services at quarterly meetings to begin in 2001 and continue through the end of 2005. **In consideration of Eschelon's agreement to provide Services and for such good and valuable consideration set forth in this agreement, Qwest agrees to pay Eschelon an amount that is ten percent (10%) of the aggregate billed charges for all purchased made by Eschelon from Qwest from November 15, 2000 through December 31, 2005.** Eschelon will invoice Qwest annually. Payment is due within 30 days of the invoice date. In the event that the Confidential Purchase Agreement between Eschelon and Qwest (as of the same date as this Agreement) is terminated, this

> paragraph of this Agreement also terminates simultaneously with termination of that Confidential Purchase Agreement and any payments made pursuant to this paragraph as of the date termination will be promptly returned to Qwest. In addition, if Eschelon fails to meet its purchase commitments under sections 2, 2.1, 2.2, 2.3, 2.4 or 2.5 of the Confidential Purchase Agreement, Eschelon will promptly return to Qwest any payments made pursuant to this section. [Emphasis added.]

100. The net effect of Paragraph 3 is to reduce the cost of every unbundled network element, telecommunications product and/or service purchased by Eschelon from Qwest by 10% as compared to the Commission-approved rates charged by Qwest to other CLECs.

101. In addition, as Paragraph 3 makes clear, the amount Eschelon is to receive for the purported "Services" is in no way tied to the value of the "Services" or the time spent by Eschelon, if any, rendering such "Services."

102. Instead, the amount Eschelon is to receive is determined solely by the amount of money spent by Eschelon on unbundled network elements, telecommunications products and/or services purchased from Qwest.

103. Moreover, regardless of the actual value of the "Services" provided by Eschelon to Qwest, Eschelon must return all of the money paid by Qwest under this agreement if Eschelon does not meet certain purchase commitments set forth in a separate agreement.

104. The Department discovered during its investigation that the amount owed by Qwest to Eschelon under this agreement for the time period between November 15, 2000 and August 31, 2001 is $2,540,017 (two million five hundred forty thousand seventeen dollars).

105. The Department further is informed and believes and on this basis alleges that the "Services" provided by Eschelon under this agreement require work no different than the work that any CLEC would do to improve Qwest's provisioning of services to it, if given the opportunity.

106. Based on the foregoing, the Department is informed and believes and on this basis alleges that the entire "consulting" arrangement described in Paragraph 3 of Eschelon Agreement IV has either the intended or unintended effect of disguising Qwest's agreement to provide Eschelon with rates for unbundled network elements, telecommunications products and/or services that are below the Commission-approved rates Qwest provides to other CLECs.

107. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same refund or consulting provision as Paragraph 3 of Eschelon Agreement IV. Qwest did not identify any such ICA.

108. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the rate reduction agreement described in Paragraph 3 of Eschelon Agreement IV.

109. By providing this term and these rates to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

110. Eschelon Agreement IV provides in Paragraph 2 as follows:

> For any month (or partial month) from November 1, 2000 until the mechanized process is in place, during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access, Qwest will credit Eschelon $13.00 (or pro rata portion thereof) per Platform line per month as long as Eschelon has provided the WTN information to Qwest. After the mechanized process is in place, Eschelon and Qwest will use the established escalation procedures if a dispute arises. Qwest will credit the IXC and other companies for daily usage traffic that Qwest provides to Eschelon to bill to the IXC (to eliminate double billing).

111. On December 6, 2000 Eschelon submitted Amendment 8 to its ICA with Qwest to the Commission for approval pursuant to 47 U.S.C. § 252(e). Attachment 3.2 to Amendment 8 sets out rates for the Platform referred to in Eschelon Agreement IV. Amendment 8 does not contain the rate refund agreement described in Paragraph 2 of Eschelon Agreement IV.

112. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same rate refund provision as Paragraph 2 of Eschelon Agreement IV. Qwest did not identify any such ICA.

113. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the rate refund agreement described in Paragraph 2 of Eschelon Agreement IV.

114. By providing this term to Eschelon and to no other CLEC, Qwest discriminated against other CLECs and violated 47 U.S.C. § 251(c).

Eschelon Agreement V

115. On July 3, 2001 Qwest entered into a written letter agreement regarding its reporting of switched access minutes on UNE-P lines leased by Eschelon ("Eschelon Agreement V"). A true and correct copy of Eschelon Agreement V provided to the Department by Qwest is attached as Exhibit 5 to this complaint.

116. As set forth more specifically below, Eschelon Agreement V sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit Eschelon Agreement V to the Commission for approval under 47 U.S.C. § 252(e).

117. To date, Qwest has not submitted Eschelon Agreement V to the Commission for approval under 47 U.S.C. § 252(e).

118. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

119. The third paragraph of Eschelon Agreement V increases the UNE-Platform credit set out in Eschelon Agreement IV, Paragraph 2, from $13 per line per month to $16 per line per month.

120. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same rate refund agreement as the third paragraph of Eschelon Agreement V. Qwest did not identify any such ICA.

121. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains this term.

122. By providing this term to Eschelon and to no other CLEC, Qwest discriminated against other CLECs and violated 47 U.S.C. § 251(c).

123. The fifth paragraph of Eschelon Agreement V reads as follows:

> Eschelon has also noted an issue relating to access records for Qwest's intraLATA toll traffic terminating to customers served by Eschelon's switch. The ongoing analysis and resources expended by Eschelon and Qwest will also address this issue. As of June 1, 2001, until the parties agree that the issue is resolved, Qwest will pay Eschelon $2.00 per line per month for such traffic.

124. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provision as the fifth paragraph of Eschelon Agreement V. Qwest did not identify any such ICA.

125. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains this term.

126. By providing this term to Eschelon and to no other CLEC, Qwest discriminated against other CLECs and violated 47 U.S.C. § 251(c).

Eschelon Agreement VI

127. On July 31, 2001 Qwest entered into the *Qwest/Eschelon Implementation Plan* ("Eschelon Agreement VI"). A true and correct copy of Eschelon Agreement VI provided to the Department by Qwest is attached as Exhibit 6 to this complaint.

128. As set forth more specifically below, Eschelon Agreement VI sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit Eschelon Agreement VI to the Commission for approval under 47 U.S.C. § 252(e).

129. To date, Qwest has not submitted Eschelon Agreement VI to the Commission for approval under 47 U.S.C. § 252(e).

130. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

131. Eschelon Agreement VI provides in Paragraph 2.1 et seq. as follows:

> 2.1. Qwest has established a service account team for Eschelon. Other organizations within Qwest also interact directly with Eschelon personnel. Each functional area has specific functional support responsibilities. (See, for example, Attachment 1).
>
> 2.1.1. The Qwest Service Management team will hold weekly meetings with Eschelon to identify and resolve service-related issues.
>
> 2.1.2. As desired, the Qwest Service Management team will continue to facilitate other meetings with subject matter experts within Qwest to address Eschelon's service-related issues.
>
> 2.1.3. Qwest will provide Eschelon policy and process change information electronically through the use of a centrally maintained database. Detailed Eschelon-specific information will be provided to Eschelon through the Service Management Account Team.

132. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as Paragraphs 2.1 et seq. of Eschelon Agreement VI. Qwest did not identify any such ICA.

133. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

134. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

135. Eschelon Agreement VI provides in Paragraph 2.2 as follows:

> Qwest has provided Eschelon with an escalation chart and process to follow (Attachment 2) in identifying the names and telephone numbers of the persons at Qwest (or their successors) that Eschelon may contact to escalate service-related issues. Qwest and Eschelon may agree to revise the escalation chart and process from time to time, provided the level of support to Eschelon is not decreased.

136. Attachment 2 to Eschelon Agreement VI provides detailed information regarding service escalation procedures, including contact information for service related issues. These escalation procedures differ from the escalation procedures set out in Section 3 of Eschelon Agreement III, described above.

137. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same waiver provisions as Paragraph 2.2 and Attachment 2 of Eschelon Agreement VI. In response, Qwest identified only Section 1.3 of Amendment 8 to the Eschelon ICA.

138. Section 1.3 of Amendment 8 to the Eschelon ICA says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." Section 1.3 does not address the specific escalation procedures set forth in Paragraph 2.2 and Attachment 2 of Eschelon Agreement VI.

139. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains similar escalation procedures or information.

140. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

141. Eschelon Agreement VI provides in Paragraph 2.3 as follows:

> Each quarter until December 31, 2005, or as otherwise agreed by the Parties, Dana Filip and/or her designee or success or and Rick Smith and/or his designee or successor agree to meet together (via telephone, live conference or otherwise) to review the status of Eschelon's service –related issues.

142. Dana Filip is a Senior Vice President at Qwest. The Department is informed and believes and on this basis alleges that Richard Smith is the President and Chief Operating Officer of Eschelon.

143. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains a requirement that a person with equal or greater title to Ms. Filip meet with the CLEC on a quarterly basis. In response, Qwest identified only Section 1.3 of Amendment 8 to the Eschelon ICA.

144. Section 1.3 of Amendment 8 to the Eschelon ICA says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." Section 1.3 does not require quarterly meetings of any kind.

145. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains a similar requirement for quarterly meetings by a Senior Vice President at Qwest to discuss service related issues.

146. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

147. Eschelon Agreement VI provides in Paragraph 3.1 as follows:

> The Parties have agreed that Qwest will calculate local usage charges associated with Unbundled Network Element Platform ("UNE-P") switching on Eschelon's interLATA and intraLATA toll traffic, and Eschelon will pay undisputed amounts within 30 days from Eschelon's receipt of the monthly invoice from Qwest. (See Attachment 3.2, ¶III (B) of Interconnection Agreement Terms, Nov. 15, 2000). Qwest will calculate local usage charges in accordance with the procedures set forth on Attachment 3 to this Implementation Plan.

148. Attachment 3 to Eschelon Agreement VI sets out 6 paragraphs (not including subparagraphs) of detail on the methodology to be used to calculate local usage charges associated with UNE-P switching.

149. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as Paragraph 3.1 and Attachment 3 to Eschelon Agreement VI. Qwest did not identify any such ICA.

150. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains a similar methodology to be used to calculate local usage charges associated with UNE-P switching.

151. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

152. Eschelon Agreement VI provides in Paragraph 4 et seq. as follows:

> Eschelon has alleged that Qwest has failed at times to promptly provide services. In order to ascertain Qwest's service levels, the parties have agreed to the following:
>
> > 4.1 Qwest and Eschelon will track and report performance measurements designed to monitor Qwest's levels of service.
> >
> > 4.2 Representatives from Qwest and Eschelon will hold monthly working meetings to review and discuss the measurements. Quarterly executive level meetings will also be held to review results, performance trends, and set service improvement priorities.

> 4.3 A jointly developed action plan will be created, implemented and reviewed at the monthly meetings to facilitate the service excellence expected by both Parties.

153. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as Paragraphs 4 et seq. of Eschelon Agreement VI. Qwest did not identify any such ICA.

154. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same requirements for tracking performance measurements as set forth in Eschelon Agreement VI.

155. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

156. Eschelon Agreement VI provides in Paragraph 8 as follows:

> Qwest has undertaken certain enhancements to UNE-P and is in the process of implementing such enhancements. Qwest agrees to take commercially reasonable efforts to ensure that service provided to Eschelon's end-user customers is not adversely affected during the conversion to UNE-P. Qwest will provide notice to Eschelon before changes relating to the conversion are made, plan the conversion jointly with Eschelon, and use a phased approach to converting customers over time on an agreed upon schedule.

157. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same requirement that Qwest work with a CLEC on UNE-P conversions as described in Paragraph 8 of Eschelon Agreement VI. Qwest did not identify any such ICA.

158. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same requirements as are set forth in Paragraph 8 to Eschelon Agreement VI.

159. By providing this term to Eschelon and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

THE COVAD AGREEMENT

160. Today and at all times described below, Covad Communications Company ("Covad") is and was licensed and certificated to operate as a CLEC in Minnesota.

161. Today and at all times described below, Covad is and was party to an ICA with Qwest that was approved by the Commission under 47 U.S.C. § 252(e).

162. On April 19, 2000 Qwest entered into the *U S WEST Service Level Agreement with Covad Communications Company* (the "Covad Agreement"). A true and correct copy of the Covad Agreement provided to the Department by Qwest is attached as Exhibit 7 to this complaint.

163. As set forth more specifically below, the Covad Agreement is an agreement to provide access to unbundled network elements on specified terms and conditions. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit the Covad Agreement to the Commission for approval under 47 U.S.C. § 252(e).

164. To date, Qwest has not submitted the Covad Agreement to the Commission for approval under 47 U.S.C. § 252(e).

165. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

166. The Covad Agreement provides in section 1 as follows:

> U S WEST will provide 90% of Covad's Firm Order Confirmation (FOC) dates within 48 hours of receipt of properly completed service requests for POTS unbundled loop services. It is understood that these POTS services will not require loop conditioning activity of any sort (load coil or bridged tap removal). U S WEST will notify Covad of any facilities shortages for DSL capable, ISDN capable and DS1 capable services within the same 48 hour period.

167. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as section 1 of the Covad Agreement. In response, Qwest identified only section 2.4 of the Eschelon ICA and section 1.3.4 of its ICA with FirstCom.

168. According to Qwest, Section 2.4 of the Eschelon ICA reads as follows:

> U S WEST will provide FOCs (Firm Order Commitments) to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders. The FOC assumes that there is sufficient network capacity to meet the request in the standard interval. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB [individual case basis] orders will reflect an ICB FOC date.

169. According to Qwest, Section 1.3.4 of the FirstCom ICA reads as follows:

> Qwest will provide FOCs to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders for Regular POTS or Simple Business end-users. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

170. Neither ICA provision contains the commitment by Qwest to meet the FOC interval standard at least 90% of the time. Neither ICA provision contains the commitment by Qwest to notify the CLEC of any facility shortages for DSL capable, ISDN capable and DS1 capable services within the same FOC period.

171. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

172. By providing these terms to Covad and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

173. The Covad Agreement further provides in Section 1 as follows:

> For DSL capable, ISDN capable and DS1 capable unbundled loop services, U S WEST will provide 90% of Covad's FOC dates within 72 hours of receipt of properly completed service requests. As part of the 72-hour FOC process, U S WEST will dispatch a technician to verify the existence of suitable facilities prior to providing Covad an FOC date.

174. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as are set forth here from the Covad Agreement. With respect to the 72 hour FOC obligation, Qwest identified only section 2.4 of the Eschelon ICA and section 1.3.4 of its ICA with FirstCom, as set forth above. Neither ICA provision, however, contains either the 72 hour FOC requirement for DSL capable, ISDN capable and DS1 capable unbundled loops or the 90% commitment by Qwest.

175. With respect to the technician dispatch provision, Qwest identified Section 1, Part C, Para. 6 of the Fourth Amendment to its ICA with New Edge Networks. According to Qwest, that provision reads as follows:

> As part of the FOC process for 2-wire non loaded unbundled loop service where CLEC indicates that they intend to use the 2-wire non loaded unbundled loop for the provision of SDSL service, ISDN-, DS 1- or DSL-capable (excluding ADSL-capable) unbundled loop services, when requested to do so by CLEC, Qwest will dispatch a technician to verify the existence of suitable facilities prior to providing CLEC an FOC date.

176. The New Edge language also includes a footnote, which reads as follows:

> CLEC is willing to limit the above provision to the following market areas: Vancouver, WA; Tucson; Omaha; Cedar Rapids; Albuquerque; Colorado Springs; Minneapolis; Boise; Salt Lake City (Ogden); Eugene; Salem; Spokane, and Des Moines.

177. This provision from the New Edge agreement, however differs significantly from the provision in Section 1 of the Covad Agreement. The New Edge agreement has geographical limitations; the Covad Agreement does not. The New Edge agreement is limited to 2-wire non-loaded loops and excludes ADSL-capable loops. The Covad Agreement does not contain these limitations. Finally, the New Edge agreement only requires technician dispatch when requested

by the CLEC. The Covad Agreement requires dispatch on every DSL capable, ISDN capable and DS1 capable loop order.

178. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

179. By providing these terms to Covad and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

180. The Covad Agreement further provides in Section 2 as follows:

> When facilities are available, U S WEST will provide Covad with unbundled loop service that does not require loop conditioning consistent with U S WEST's published Standard Interval Guide, as of March 31, 2000 at least 90% of the time. The standard intervals will not apply if Covad requests a later completion date, or if the order is delayed for customer cause, or reasons outside U S WEST's control. U S WEST will provide Covad with line sharing service (access to the high-frequency spectrum network element) at least 90% of the time within the interval set forth in any line sharing agreement between Covad and U S WEST.

181. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

182. By providing these terms to Covad and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

183. The Covad Agreement further provides in Section 3 as follows:

> U S WEST will reduce the incidence of failure on new Covad circuits to less than 10% failure within the first 30 calendar days. For purposes of measurement, "failures" would be defined as U S WEST troubles, or troubles attributed to U S WEST facilities and central office equipment, or to U S WEST employees. "Failures" would not include repair tickets which are informational in nature, or troubles isolated outside the U S WEST network.

184. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as are set forth here from Section 3 of the

Covad Agreement. In response, Qwest identified only section 2.4 of the Eschelon ICA and section 1.3.4 of its ICA with FirstCom, as set forth above. Neither ICA provision, however, contains any reference to incidents of failure after a circuit is installed.

185. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

186. By providing these terms to Covad and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

187. The Covad Agreement further provides in Section 4 as follows:

> For those service requests held due to line conditioning, U S WEST will provide Covad the option of paying for the line conditioning at the appropriate rate approved by the relevant State Commissions, which U S WEST will complete in 24 days or less 90% of the time.

188. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as are set forth here from Section 4 of the Covad Agreement. In response, Qwest identified only section 2.4 of the Eschelon ICA and section 1.3.4 of its ICA with FirstCom, as set forth above. Neither ICA provision, however, contains any commitments for completing line conditioning.

189. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains these terms.

190. By providing these terms to Covad and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

191. The Covad Agreement further provides in Section 4 as follows:

> In those situations where the end user customer is served by digital loop carrier or off pair gain, U S WEST will notify Covad of that situation and provide it the

> option of submitting a service request for an ISDN capable loop compliant with TR-393 standards and U S WEST Technical Publication 77399. U S WEST will, where technically feasible, either install an appropriate ISDN card for those end users customers served by digital loop carrier or provide another ISDN option for those served off of pair gain in 10 days or less 90% of the time. Where it would not impact a current end user customer, U S WEST will perform a line and station transfer in order to provision the Covad service request in 10 days or less 90% of the time.

192. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same provisions as are set forth here from the Covad Agreement. In response, Qwest identified Section 1, Part C, Para. 5 of the Fourth Amendment to its ICA with New Edge Networks. According to Qwest, that provision reads as follows:

> In those situations where the end user customer is served by digital loop carrier or by pair gain, Qwest will notify CLEC of that situation and provide it the option of submitting a service request for an ISDN capable loop compliant with TR-303 standards and Qwest Technical Publication 77399. Qwest will, where technically feasible, either install an appropriate ISDN card for those end user customers served by digital loop carrier, or provide another ISDN option for those served off of pair gain. Where it would not impact a current customer, Qwest will perform a line station transfer in order to provision a CLEC service request.

193. The New Edge agreement, however, does not provide the same installation intervals and service level commitments as are contained in the Covad agreement.

194. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the terms set forth above from Section 4 of the Covad Agreement.

195. By providing these terms to Covad and to no other CLEC, discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

THE SMALL CLEC AGREEMENT

196. On April 18, 2000 Qwest entered into the *Confidential Stipulation Between Small CLECS and U S WEST* (the "Small CLEC Agreement"). The Small CLEC Agreement is an agreement between Qwest and the following 10 small CLECS: HomeTown Solutions, LLC.

Hutchinson Telecommunications, Inc.; Mainstreet Communications, LLC; Onvoy Communications Corporation; NorthStar Access, LLC; Otter Tail Telecom, LLC; Paul Bunyan Rural Telephone Cooperative; Tekstar Communications, Inc.; VAL-ED Joint Venture, LLP; and WETEC LLC (collectively, "the Small CLECs"). A true and correct copy of the Small CLEC Agreement provided to the Department by Qwest is attached as Exhibit 8 to this complaint.

197. Today and at all times described below, the Small CLECs are and were licensed and certificated to operate as CLECs in Minnesota.

198. Today and at all times described below, the Small CLECs are and were party to ICAs with Qwest that were approved by the Commission under 47 U.S.C. § 252(e).

199. As set forth more specifically below, the Small CLEC Agreement sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit the Small CLEC Agreement to the Commission for approval under 47 U.S.C. § 252(e).

200. To date, Qwest has not submitted the Small CLEC Agreement to the Commission for approval under 47 U.S.C. § 252(e).

201. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

202. The Small CLEC Agreement provides in Paragraph 3 as follows:

> Subject to the close of the Merger, effective March 17, 2002, and subject to technical feasibility, U S WEST will permit all Small CLECs operating in Minnesota the ability to adopt the terms of any effective interconnection agreements that were voluntarily negotiated and entered into by U S WEST and CLECS in any other state in U S WEST's operating territory, subject to the following conditions:
>
> > a. This provision does not apply to terms that were ever reached as a result of an arbitrated decision or any other decision in a contested case action, unless the terms which the CLEC seeks to adopt are present in interconnection agreements in a minimum of four other states in U S WEST's territory; and

> b. The prices for all services should, however, be determined based on Minnesota specific costs. Where no rate exists for the services in Minnesota, the rate approved in the originating state should be applied as an interim rate until a Minnesota specific rate can be determined; and
>
> c. This provision does not apply to those determinations made by a state Commission which are based upon fact specific characteristics of the provider (e.g. geographic scope and functionality of a specific provider in determining end office or tandem treatment).
>
> The provisions in paragraph 3, 3.a, 3.b and 3.c shall remain confidential between U S WEST and the Small CLECs and shall be implemented through an interconnection agreement amendment to be filed and effective on March 17, 2002, and which will expire on December 31, 2003. The requirements of confidentiality expire on March 17, 2002.

203. On November 27, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same opt-in/pick and choose provisions as are described in Paragraph 3 of the Small CLEC Agreement. Qwest did not identify any such ICA.

204. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same ICA opt-in provisions as are set forth in Paragraph 3 of the Small CLEC Agreement.

205. By providing this term to the Small CLECS and to no other CLEC, discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

THE MCLEODUSA AGREEMENTS

206. Today and at all times described below, McLeodUSA, Inc. is and was licensed and certificated to operate as a CLEC in Minnesota.

207. Today and at all times described below, McLeodUSA is and was party to an ICA with Qwest that was approved by the Commission under 47 U.S.C. § 252(e).

208. Between April 25, 2000 and February 12, 2001, Qwest entered into a series of secret agreements with McLeodUSA.

McLeod Agreement I

209. On April 28, 2000 Qwest entered into a *Confidential Billing Settlement Agreement* with McLeodUSA that related, in part, to the merger between U S WEST and Qwest ("McLeod Agreement I"). A true and correct copy of McLeod Agreement I provided to the Department by Qwest is attached as Exhibit 9 to this complaint.

210. As set forth more specifically below, McLeod Agreement I sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit McLeod Agreement I to the Commission for approval under 47 U.S.C. § 252(e).

211. To date, Qwest has not submitted McLeod Agreement I to the Commission for approval under 47 U.S.C. § 252(e).

212. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

213. In abrogation of its duty of non-discrimination and in defiance of the requirements of 47 U.S.C. § 252(a)(1), Qwest included a confidentiality clause in McLeod Agreement I that prevented other CLECs, the Commission and the Department from discovering the existence of the agreement and the specific terms of interconnection and access to unbundled network elements described below.

214. The confidentiality clause in Paragraph 6 of McLeod Agreement I reads as follows:

> The Parties expressly agree that they will keep the substance of the negotiations and/or conditions of the settlement and the terms or substance of this Confidential Billing Settlement Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of the settlement and the terms or substance of this agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to

do so by law. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Billing Settlement Agreement. The parties agree that this Confidential Billing Settlement Agreement and negotiations, and all matters related to these two matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

215. McLeod Agreement I provides in Paragraph 2.d as follows:

Subject to merger closure and in consideration for the bill and keep arrangement agreed upon above, U S WEST and McLeod USA agree that all interim rates, except reciprocal compensation rates, will be treated as final and any final commission orders entered in any of the 14 states in U S WEST's territory through April 30, 2000 and on a going-forward basis through December 31, 2002, (except as such orders may relate to reciprocal compensation rates for the period between March 1, 2000 and December 31, 2002 – reciprocal compensation is addressed in paragraph 2.c of this agreement) will be applied prospectively to McLeodUSA, and not retroactively. In addition, U S WEST agrees that this settlement term will apply throughout the terms of the parties' existing interconnection agreements. Thus, both Parties agree not to bill each other for any true-ups associated with final commission orders that affect interim prices and release claims for such true-ups.

216. On December 3, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same terms as described in Paragraph 2.d of McLeod Agreement I. Qwest did not identify any such ICA.

217. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same provisions as are set forth in Paragraph 2.d of McLeod Agreement I.

218. By providing this term to McLeodUSA and to no other CLEC, discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

McLeod Agreement II

219. On October 26, 2000 Qwest entered into a *Confidential Agreement* with McLeodUSA ("McLeod Agreement II"). A true and correct copy of McLeod Agreement II provided to the Department by Qwest is attached as Exhibit 10 to this complaint.

220. As set forth more specifically below, McLeod Agreement II sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit McLeod Agreement II to the Commission for approval under 47 U.S.C. § 252(e).

221. To date, Qwest has not submitted McLeod Agreement II to the Commission for approval under 47 U.S.C. § 252(e).

222. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

223. McLeod Agreement II provides in Section 2 as follows:

> Beginning in 2001 and continuing through the end of 2003, the parties agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, adjustments to the Purchase Agreements, if any, the Implementation Process, and any anticipated business issues. The meetings will be attended by executives from both companies at the vice-president and/or above level.

224. On December 20, 2000 McLeodUSA submitted Amendment 8 to its ICA with Qwest to the Commission for approval pursuant to 47 U.S.C. § 252(e). Paragraph 1.3 of the amendment says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." This paragraph 1.3, however, does not require Qwest to attend quarterly meetings and does not require Qwest to provide an executive from the vice-president or above level for such meetings.

225. The Department is informed and believes and on this basis alleges that there are no provisions in any McLeodUSA ICA that set forth the quarterly meeting requirements described in Section 2 of McLeod Agreement II.

226. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same term as McLeod Agreement II.

227. By providing this term to McLeodUSA and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

228. McLeod Agreement II provides in Section 3 for specific, six-level escalation procedures for resolving any and all business issues between them, including ICA issues. The preamble to Section 3 reads as follows:

> The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frame to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; and (4) complete all levels of dispute resolution before seeking resolution from the American Arbitration Association or any regulatory or judicial forum.

229. Under the escalation procedures set out in McLeod Agreement II, Level 1 involves Vice Presidents. Level 2 involves Senior Vice Presidents. Level 3 involves CEOs. Level 4 is arbitration. Level 5 is a return to CEOs, and Level 6 is litigation in state or federal courts. Levels 1, 2, and 3are assigned 10 business days for completion. Level 5 is assigned 5 business days for completion.

230. Under McLeod Agreement II, Level 6A of the escalation procedures allows the parties to take an unresolved dispute involving technical telecommunications issues or an interpretation of regulatory requirements to the appropriate state or federal regulatory body, so long as the dispute does not involve a determination of penalties or damages. Level 6B allows

either party to initiate a complaint in federal court, with all questions of fact to be determined by a judge and not a jury, for disputes not resolved through escalation Levels 1 through 6A.

231. On December 20, 2000 McLeodUSA submitted Amendment 8 to its ICA with Qwest to the Commission for approval pursuant to 47 U.S.C. § 252(e). Paragraph 1.3 of the amendment says "The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the parties." This paragraph 1.3, however, does not set out the specific escalation steps described in McLeod Agreement II and certainly does not commit Vice Presidents, Sr. Vice Presidents or Qwest's CEO to participate in issue escalations.

232. The Department is informed and believes and on this basis alleges that there are no provisions in any McLeodUSA ICA that set forth the escalation process described in Section 3 of McLeod Agreement II.

233. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same escalation process as McLeod Agreement II.

234. By providing these terms to McLeodUSA and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

235. McLeod Agreement II further provides in Section 3 that if a dispute reaches Level 6B:

> In the event that either party files an action in court, the parties waive (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent such damages are reasonably foreseeable and acknowledging each party's duty to

mitigate damages; and the Interconnection Agreements are hereby amended accordingly.

236. The Department is informed and believes and on this basis alleges that there are no provisions in any McLeodUSA ICA that set forth the waiver provisions described in Section 3 of McLeod Agreement II.

237. The Department is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same waiver provisions as this term of McLeod Agreement II.

238. By providing this term to McLeodUSA and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. § 251(c).

McLeod Agreement III

239. On October 26, 2000 Qwest entered into an oral agreement to provide McLeodUSA with an 8% to 10% discount on all purchases made by McLeodUSA from Qwest between October 2, 2000 and December 31, 2003 ("McLeod Agreement III").

240. As set forth more specifically below, McLeod Agreement III sets the rates that McLeodUSA pays for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit McLeod Agreement III to the Commission for approval under 47 U.S.C. § 252(e).

241. To date, Qwest has not submitted McLeod Agreement III to the Commission for approval under 47 U.S.C. § 252(e).

242. Qwest therefore violated and remains in violation of 47 U.S.C. § 252(a)(1).

243. McLeod Agreement III is an oral agreement pursuant to which Qwest agreed to provide McLeodUSA with an 8% to 10% discount on all purchases made by McLeodUSA from Qwest.

244. The discount applies to all products and services purchased by McLeodUSA from Qwest, including interconnection, access, unbundled network elements, collocation, resale services, and tariffed products and services. The discount applies for all purchases made by McLeodUSA from Qwest inside and outside of Qwest's 14-state territory. The term of the agreement is October 2, 2000 through December 31, 2003.

245. The effect of the discount is to reduce the rates that McLeodUSA pays for, among other things, interconnection, access to network elements, collocation, services for resale and reciprocal compensation by 8% to 10%.

246. No ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same terms as McLeod Agreement III.

247. By providing this rate discount to McLeodUSA and to no other CLEC, Qwest discriminated and continues to discriminate against other CLECs in violation of 47 U.S.C. §§ 251(b) and (c).

THE USLINK / INFOTEL AGREEMENT

248. Today and at all times described below, USLink, Inc. and InfoTel Communications, LLC are and were licensed and certificated to operate as a CLEC in Minnesota.

249. Today and at all times described below, USLink and InfoTel are and were parties to ICAs with Qwest that were approved by the Commission under 47 U.S.C. § 252(e).

250. On July 14, 1999 Qwest entered into an agreement with USLink, Inc. and InfoTel Communications, LLC (the "USLink Agreement"). A true and correct copy of the USLink Agreement provided to the Department by Qwest is attached as Exhibit 11 to this complaint.

251. As set forth more specifically below, the USLink Agreement sets out terms and conditions for interconnection and access to unbundled network elements. As such, 47 U.S.C. § 252(a)(1) requires Qwest to submit the USLink Agreement to the Commission for approval under 47 U.S.C. § 252(e).

252. To date, Qwest has not submitted the USLink Agreement to the Commission for approval under 47 U.S.C. § 252(e).

253. The USLink Agreement provides in Paragraph 1 as follows:

> USLink and InfoTel shall be allowed to utilize local tandem switching functionality and transport from and to U S WEST end offices in the exchanges listed below (hereinafter "Requested Exchanges") to transport calls within the Requested Exchanges and the exchanges included in the Commission approved EAS calling areas for those exchanges. U S WEST will allow USLink and InfoTel to utilize the Requested Exchanges as local tandem switches:
>
> A. Requested Exchanges
>
> Brainerd; (includes Nisswa remote)
>
> Duluth;
>
> Fargo (includes Moorehead/West Fargo);
>
> Fergus Falls;
>
> Grand Rapids;
>
> Hibbing;
>
> Little Falls;
>
> Owattona;
>
> Rochester;

St. Cloud;

Wadena; and

Willmar.

254. Paragraph 3 of the USLink Agreement goes on to state, "USLink and InfoTel may request to utilize tandem switching functionality and transport to originate or terminate local traffic within the Requested Exchanges, or in other U S WEST end office exchanges. Except for those exchanges listed in paragraphs 1 and 2, such a request will not impose any obligation on U S WEST."

255. On December 3, 2001 the Department asked Qwest to identify an ICA approved by the Commission that contains the same terms as described in the USLink Agreement. Qwest did not identify any such ICA.

256. The Department therefore is informed and believes and on this basis alleges that no ICA approved by the Commission under 47 U.S.C. § 252(e) with Qwest as a party contains the same provisions as are set forth in Paragraphs 1 and 3 of the USLink Agreement.

257. On December 26, 2000 Dakota Telecom, Inc. ("DTI") filed a settlement agreement in Commission Docket No. P421/C-00-373 whereby Qwest provided DTI and multiple intervenor/signatory CLECs (including USLink) the right to utilize tandem switching functionality and transport from and to end offices in the exchanges listed above to transport calls within the Requested Exchanges and the exchanges included in the Commission approved EAS calling areas for those exchanges. Qwest further agreed to make these terms available to any requesting , non-signatory CLECs as well.

258. On July 25, 2001 the Commission issued an order in Docket No. P421/C-00-373 finding that the settlement agreement constituted an amendment to the parties' interconnection agreements. The Commission said:

> The Commission has analyzed the settlement terms and finds that they require Qwest to do things that the Company was not required to do under the existing interconnection agreement. ...
>
> As such, the Settlement Agreement amends the interconnection agreements between Qwest and the CLECs signing the settlement agreement. The parties' interconnection agreements, as amended by the settlement terms, will be available to any CLEC requesting a copy pursuant to Section 252(i) of the Federal Telecommunications Act.

259. Thus the Commission found, as a matter of law, that the terms of the USLink Agreement constitute an amendment to the USLink interconnection agreement. By failing to file a copy of the USLink Agreement with the Commission for approval under 47 U.S.C. § 252(e), Qwest therefore violated 47 U.S.C. § 252(a)(1).

260. Moreover, by providing the right to utilize tandem switching functionality and transport from and to the end offices identified above to USLink and InfoTel only from July, 1999 through December, 2000 Qwest discriminated against other CLECs in violation of 47 U.S.C. § 251(c).

REQUEST FOR EXPEDITED PROCEEDINGS

261. Qwest's continuing failure to comply with its obligations under state and federal law warrants expedited proceedings, temporary relief and penalties available pursuant to Minn. Stat. § 237.462, which authorizes the Commission to conduct expedited proceedings, impose temporary relief and impose penalties to remedy violations of interconnection agreements and incumbent local exchange carrier obligations under Section 251 of the Act and Minnesota law.

262. Pursuant to Minn. Stat. § 237.462 subd. 6, the Department requests that the Commission conduct an expedited proceeding to resolve this Complaint.

263. Qwest's conduct has inhibited and/or limited CLECs in their ability to compete effectively in Minnesota markets, including the ability to compete in the Minnesota local exchange markets.

264. As a result of Qwest's conduct, Minnesota's end user customers have been denied the benefits of potentially increased competition.

265. Qwest's conduct, as described above, is harmful to the public interest and the public is being denied the benefits of competition, including lower prices and diversity of telecommunications services, contrary to public policy favoring competition. Expedited resolution of this matter will advance the development of competition and, therefore, advance the public interest.

266. Carriers have been hindered in their ability to compete in the local exchange market in Minnesota as a result of Qwest's unlawful behavior.

267. Through such behavior, Qwest benefits by the retention of its dominance over the local exchange markets in Minnesota.

268. Accordingly, the Department requests that the Commission resolve this Complaint as soon as possible, and in no event, no more than 60 days from today.

REQUEST FOR TEMPORARY RELIEF

269. Minn. Stat. § 237.462, subd. 7 provides for temporary relief pending dispute resolution.

270. Based on the facts as pleaded, the Department is likely to succeed on the merits. State and federal law requires Qwest to submit agreements setting forth terms and conditions of interconnection to this Commission for review and approval and/or to refrain from offering terms and conditions of interconnection in a discriminatory manner.

271. An order for temporary relief is necessary to protect the public's interest in fair and reasonable competition. Despite clear legal obligations to provide non-discriminatory service, and to do so expeditiously, Qwest has refused to comply with the law. Unless the Commission orders Qwest immediately to submit to the Commission for approval those portions of the Secret Agreements that relate to terms and conditions of interconnection, Qwest will continue to provide access to its network and services in a discriminatory and unlawful manner.

272. Without immediate relief, Qwest's secretive tactics will achieve Qwest's goal of limiting competition to itself and, to a lesser degree, some of its wholesale customers of choice. Thus the Act's and this Commission's goal of bringing local exchange competition to the consumers of Minnesota will be further hindered.

273. The Department's proposal to make all terms and conditions of interconnection available to all CLECs in a non-discriminatory manner is technically feasible. Qwest has provided the Department with no evidence to the contrary.

274. Accordingly, under Minn. Stat. § 237.462, subd. 7, the Department hereby requests that the Commission order Qwest immediately to make any and all of the specified terms or conditions of interconnection or service public, and immediately available to any other CLEC who wishes to adopt said provision(s).

REQUEST FOR PENALTIES

275. Through its conduct as described above, Qwest has willfully refused to comply with its obligations under state and federal law.

276. By its delay in submitting these agreements to this Commission for approval and its refusal to provide non-discriminatory access to services, Qwest has willfully hindered competition in Minnesota.

277. According to Qwest's website, Qwest Communications International, Inc., Qwest Corporation's parent, reported annual revenues of over $20 billion and assets of over $74 billion for the year 2001. With these revenues and assets, Qwest Corporation and its parent have the financial ability to pay any penalty this Commission may impose in this proceeding. The Department asks the Commission to impose the maximum penalty for each violation under the statute.

RELIEF REQUESTED

Wherefore, the Department requests that the Commission:

278. Pursuant to Minn. Stat. § 237.462, order an expedited hearing to be held before this Commission.

279. Grant the Department temporary relief by making the relevant portions of the contracts public and directing Qwest to immediately provide all requesting carriers the opportunity to pick and choose any of the terms and conditions contained therein.

280. Pursuant to Minn. Stat. § 237.462, make a finding that for each of the contracts described in the Complaint, that Qwest acted in violation of state and/or federal law;

281. Declare that each of Qwest's violations of law were in bad faith and anti-competitive;

282. Pursuant to Minn. Stat. § 237.462, subd. 2, impose penalties on Qwest in the amount of $10,000 per day for each of Qwest's prior failure, and for each day of its continuing failure to comply with the requirements of state or federal law.

283. Grant such other and further relief as the Commission may deem just and reasonable.

Dated: June ___, 2002

Respectfully submitted,

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_____
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