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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Application by Qwest Communications International, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Nebraska & North Dakota

WC DOCKET NO. 02-148

COMMENTS
OF THE
NORTH DAKOTA PUBLIC SERVICE COMMISSION

July 1, 2002

Susan E. Wefald, President
Leo M. Reinbold, Commissioner
Anthony T. Clark, Commissioner

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BACKGROUND

On May 28, 1997, the NDPSC issued an Order Opening Investigation of U S WEST's entry into the interLATA toll market under Section 271(d)(3) of the Telecommunications Act of 1996. In that Order the NDPSC established a two-phase review process. Phase One was a comment phase and was completed on June 30, 1997. Phase two was to begin when U S WEST filed its petition to provide interLATA services with this NDPSC. This filing would be made a minimum of 90 days prior to U S WEST's filing with the FCC. The investigation was identified as Case No. PU-314-97-193.

On May 25, 2000, the NDPSC issued a notice that it intended, for purposes of its investigation in part, to participate in a multi-state process with the Idaho Public Utilities Commission, Iowa Utilities Board, Montana Public Service Commission, Wyoming Public Service Commission, and the Utah Public Service Commission. Since the time that the NDPSC joined the multi-state process, the New Mexico Public Regulation Commission also joined in the workshop process.

On June 5, 2000, U S WEST filed a copy of its Statement of Generally Available Terms and Conditions (SGAT) for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services in North Dakota for use during the multi-state workshops to streamline the review of U S WEST's Section 271 application. The SGAT was intended to provide a single, comprehensive document to demonstrate U S WEST's commitment to comply with legal obligations under Section 271.

Following evidentiary workshops, which included a total of 38 hearing days, the Liberty Consulting Group (LCG), retained to facilitate the workshops, issued a total of five separate reports containing proposed decisions for each of the checklist items. Information about the Multi-state 271 checklist collaborative can be accessed at http://www.libertyconsultinggroup.com/. Following each of the individual reports, the NDPSC held hearings and issued interim reports on each of the checklist items with recommendations for the resolution of issues remaining at impasse.

In August of 2000, a collaborative process was initiated with eleven of the fourteen Qwest state public service commissions participating. The process was known as the Post-Entry Performance Plan (PEPP) collaborative. The PEPP collaborative ended in May of 2001 when Qwest representatives indicated a reluctance to continue with further meetings in the current format, expressing a belief that no further consensus could be reached. Information about the PEPP can be accessed at http://www.nrri.ohio-state.edu/oss/Post271/index.htm/. On August 3, 2001, LCG held a telephonic procedural conference that resulted in the use of the multi-state checklist compliance proceedings to consider the issues of a performance assurance plan (PAP). Washington Utilities and Transportation Commission and the Nebraska Public Service Commission also joined the multi-state process for purposes of the PAP review.

Information about the Multi-state PAP collaborative can be accessed at http://www.libertyconsultinggroup.com/. Again, following LCG's report, the NDPSC held hearings and issued an interim report with recommendations for the resolution of issues remaining at impasse.

The NDPSC also participated in a thirteen-state collaborative effort to evaluate access to Qwest's operational support systems (OSS). KPMG Consulting, Inc. (KPMG) and Hewlett-Packard Consulting (HP) were consultants hired by the Regional Oversight Committee (ROC) for Qwest states to conduct the test of Qwest's OSS. A final report was issued on May 28, 2002. Information about the ROC OSS collaborative, including the final report, can be accessed at http://www.nrri.ohio-state.edu/oss/oss.htm. Parties were given opportunity to comment to the NDPSC on the OSS final report.

The interim reports issued by the NDPSC throughout this entire process were made final in the document entitled *Consultative Report of the North Dakota Public Service Commission*, adopted July 1, 2002. That document is attached to these comments.

On May 16, 2002 Qwest filed a revised Exhibit A to the North Dakota SGAT – Fifth Revision dated March 15, 2002. The filing updated Qwest's rates for interconnection, unbundled network elements and resale. The NDPSC acknowledged the revised SGAT Exhibit A and allowed the rates to go into effect on June 5, 2002 as provided for under Section 252 (f) of the Act. All rates will be reviewed in the NDPSC's new cost proceeding, Case No. PU-2342-01-296 that was opened on July 10, 2001 in response to a Qwest petition. The NDPSC will establish a procedural schedule in the new cost investigation in the near future.

THE CHECKLIST ITEMS

In its *Consultative Report of the North Dakota Public Service Commission*, adopted July 1, 2002, the NDPSC addresses each of the 14 checklist items found under Section 271 of the Telecommunications Act of 1996 relating to the access and interconnection a BOC must meet in each state where it provides local service. 47 U. C. § 271(c)(2)(B).

A. Checklist Item 1 - Interconnection

The parties raised and resolved a total of 40 issues related to the interconnection aspects of Checklist Item 1 prior to filing briefs. Twelve remaining issues were presented to the NDPSC with the facilitator's proposed resolution.

B. Checklist Item 1 – Collocation

The parties raised a total of 73 issues for discussion on collocation. Of these issues, 54 were resolved before the briefs were filed and the facilitator determined 4

issues should be addressed in other contexts. Fifteen issues were presented to the NDPSC with the facilitator's proposed resolution.

C. Checklist Item 2 – Access to Unbundled Network Elements

The parties raised a total of 22 issues related to UNEs generally. Three of these issues were presented to the NDPSC with the facilitator's proposed resolution in the Group 2 Report, and are addressed in the NDPSC's consultative report on Group 2 issues. Fifteen of those issues were resolved during the multi-state workshops. Three of those issues were presented to the NDPSC with the facilitator's proposed resolution in the Group 4 Report. One issue was deferred to another multi-state workshop, and a portion of another issue was deferred until completion of the ROC OSS testing.

D. Checklist Item 3 - Poles, Ducts, Conduits, and R-O-W

The parties raised a total of 32 issues for discussion on Checklist Item 3. Of those issues, 19 were resolved between the parties, 12 were unresolved and were presented to the NDPSC with a facilitator's proposed resolution, and one was deferred to the NDPSC cost docket.

E. Checklist Item 4 – Access to Unbundled Loops

The parties raised a total of 63 issues related to access to unbundled loops. Forty-five of those issues were resolved during the multi-state workshops. Fourteen issues were presented to the NDPSC with the facilitator's proposed resolution. Two issues were deferred to another multi-state workshop, a portion of one issue was deferred to the Group 5 multi-state workshop, and a portion of another issued was deferred to the state cost docket.

F. Checklist Item 5 – Access to Unbundled Local Transport

The parties raised a total of 17 issues related to access to unbundled local transport. Two of these issues were presented to the NDPSC with the facilitator's proposed resolution in the Group 3 Emerging Services Report, and are addressed in the NDPSC's consultative report on Group 3 issues. Six of those issues were resolved during the multi-state workshop. Nine of the issues were presented to the NDPSC with the facilitator's proposed resolution in the Group 4 Report. A portion of on issue was deferred to the NDPSC cost docket.

G. Checklist Item 6 – Access to Unbundled Local Switching

The parties raised a total of 11 issues for discussion related to access to unbundled local switching. Of those issues, 7 were resolved between the parties during

multi-state Workshop, 4 were unresolved and presented to the NDPSC with the facilitator's proposed resolution in the Group 4 Report.

H. Checklist Item 7 - 911, E-911, Directory Assistance, Operator Calls

The parties raised a total of 15 issues for discussion on Checklist Item 7. Of those issues, 14 were resolved between the parties and 1 was unresolved and presented to the NDPSC with the facilitator's proposed resolution.

I. Checklist Item 8 - White Pages

The parties raised a total of 15 issues for discussion on Checklist Item 8. Of those issues, 8 were resolved between the parties, 6 were unresolved and were presented to the NDPSC with the facilitator's proposed resolution, and 1 issue was conditioned upon changes to Qwest provisioning and subsequent satisfactory completion and NDPSC consideration of the results of any Operational Support System auditing and testing.

J. Checklist Item 9 - Numbering Administration

The parties raised a total of 3 issues for discussion on Checklist Item 9. Of those issues, 1 was unresolved and was presented to the NDPSC with the facilitator's proposed resolution, and 2 issues were deferred to multi-state Workshop One.

K. Checklist Item 10 - Databases and Associated Signaling

The parties raised a total of 6 issues for discussion on Checklist Item 10. All of those issues were either resolved between the parties or the facilitator found that Qwest's SGAT changes reasonably responded to the concerns of the party that raised concerns.

L. Checklist Item 11 – Local Number Portability

The parties raised a total of 14 issues for discussion on Checklist Item 11 — Local Number Portability. Of those issues, 13 were resolved between the parties. One issue went to impasse and was presented to the NDPSC with the facilitator's proposed resolution.

M. Checklist Item 12 - Dialing Parity

The parties raised only 1 issue for discussion on Checklist Item 12. That issue was resolved between the parties.

N. Checklist Item 13 – Reciprocal Compensation

Most of the SGAT language issues were resolved outside of the multi-state workshop among the parties. The parties raised a total of 7 issues for resolution during the multi-state workshop. Two of those issues were resolved during the parties' briefing and 5 were presented to the NDPSC with the facilitator's proposed resolution.

O. Checklist Item 14 – Resale

The parties raised a total of 42 issues for discussion on Checklist Item 14. Of those issues, 32 were resolved between the parties. Ten issues were unresolved and were presented to the NDPSC with the facilitator's proposed resolution.

FINAL STATEMENT CONCERNING CHECKLIST ITEMS

The NDPSC recommends that Qwest be deemed in compliance with the requirements of Section 271 of the Telecommunications Act of 1996

LINE SHARING

The parties raised a total of ten issues related to line sharing. Four of those issues were resolved during the multi-state workshop. Four issues were presented to the NDPSC with the facilitator's proposed resolution. Two issues were deferred, one to the NDPSC cost docket and one to the Group 4 multi-state workshop.

The NDPSC finds Qwest has demonstrated that it will provide nondiscriminatory access to line sharing.

SUBLOOP UNBUNDLING

The parties raised a total of sixteen issues for discussion on subloop unbundling. Of those issues, six were resolved during the multi-state workshop and three issues were deferred. The seven remaining issues were presented to the NDPSC with the facilitator's proposed resolution.

The NDPSC finds that Qwest should be deemed to be in compliance with the requirements for subloop unbundling.

PACKET SWITCHING

The parties raised thirteen issues relating to packet switching. Of those issues, seven were resolved during the multi-state workshop. Four issues were unresolved and presented to the NDPSC with the facilitator's proposed resolution. Two issues were deferred to the state cost docket.

The NDPSC recommends that Qwest should be deemed to be in compliance with the requirements for providing CLEC access to packet switching.

DARK FIBER

The parties raised twelve issues for discussion on dark fiber. Of those issues, eight were resolved during the multi-state workshop. Three issues went to impasse and were presented to the NDPSC with the facilitator's proposed resolution. One issue was deferred to the multi-state workshop on SGAT general terms and conditions.

The NDPSC recommends that Qwest should be deemed to be in compliance with the requirements for providing CLEC access to dark fiber.

TRACK A REQUIREMENTS

The workshop report examined each of the four Track A questions framed by the FCC in the Ameritech Michigan Order.

The NDPSC recommends that Qwest should be deemed to be in compliance with the Track A requirements of having entered into binding and approved interconnection agreements by which Qwest is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers.

GENERAL TERMS AND CONDITIONS

The parties raised a total of 37 issues related to General Terms and Conditions. Nineteen of those issues were resolved during the multi-state workshop. The remaining 18 issues were presented to the NDPSC with the facilitator's proposed resolution.

The NDPSC recommends that Qwest be deemed to have met the requirements of the Act with respect to the general terms and conditions of the SGAT.

SECTION 272 SEPARATE AFFILIATE

Twenty-five unresolved issues were presented to the NDPSC with the facilitator's proposed resolution.

Reasonable assurance exists that the structural and nonstructural safeguards implemented by Qwest will meet the purposes of section 272 in preventing improper cost allocation and cross-subsidization between Qwest and its section 272 affiliate and assuring that Qwest does not discriminate in favor of its affiliate. Qwest should be deemed to be in compliance with the Telecommunications Act Section 272 requirements for structural and nonstructural safeguards.

ROC OSS TEST

The NDPSC finds that the final report demonstrates that Qwest will provide CLECs with non-discriminatory access to OSS. In conjunction with the North Dakota QPAP and its ongoing administration, it is likely that Qwest will serve CLECs in a manner consistent with the requirements of Section 271.

QWEST PERFORMANCE ASSURANCE PLAN

The NDPSC recommends that Qwest's Performance Assurance Plan be found in the public interest.

PUBLIC INTEREST

The NDPSC finds that Qwest's requested authorization for entry into the in-region interLATA market should be deemed consistent with the Public Interest, Convenience and Necessity provided that Qwest incorporates the recommendations made by the facilitator and/or the NDPSC in this consultative report.

DATA RECONCILIATION

After reviewing the evidence submitted by Liberty Consulting Group, and arguments of both Qwest and AT&T, the NDPSC concludes that Qwest's audited and reconciled performance results demonstrate that the NDPSC can rely on Qwest's performance data to evaluate whether Qwest satisfies Section 271 of the Act.

COMMERCIAL PERFORMANCE

The Commission recommends approval of Qwest's 271 application based on Qwest's most recent commercial performance.

After reviewing the evidence submitted by Liberty Consulting Group, and arguments of both Qwest and AT&T, the NDPSC concludes that Qwest's audited and reconciled performance results demonstrate that the NDPSC can rely on Qwest's performance data to evaluate whether Qwest satisfies Section 271 of the Act.

FINAL STATEMENT

The NDPSC finds the Qwest North Dakota SGAT Sixth Revision dated May 30, 2002, as updated by a correction filed by Qwest on June 4, 2002, and updated by Qwest's corrected Exhibit A also filed on June 4, 2002, has incorporated the recommendations of the NDPSC.

The NDPSC finds that Qwest has adequately addressed the section 271 requirements. The NDPSC will continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open.

PUBLIC SERVICE COMMISSION

Anthony T. Clark **Commissioner**	**Susan E. Wefald** **President**	**Leo M. Reinbold** **Commissioner**

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WC DOCKET NO. 02-148

Concurring Opinion
Commissioner Susan E. Wefald

July 1, 2002

Today we are submitting our comments of the North Dakota Public Service Commission (NDPSC) with the FCC on Qwest's compliance with the requirements of section 271 in North Dakota. These comments and the attached consultative report are the result of an immense amount of work which was required to gather the data and information that was required for Qwest to demonstrate compliance. Our final statement in the comments very simply states the Commission's conclusion in this proceeding: "The NDPSC finds that Qwest has adequately addressed the section 271 requirements. The NDPSC will continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open."

The NDPSC has a very small public utility staff. We have 41/2 people who take care of telecommunications issues, as well as electric issues, natural gas issues, siting, and consumer affairs contacts. We have one attorney on our staff who advises the commission on legal matters that affect all divisions of the commission including grain elevator licensing, coal mining permitting and reclamation, weights and measures, auctioneer licensing, etc. One person from our public utility staff, Pat Fahn, and our attorney Bill Binek committed a great share of their time to this case. The other members of the public utility staff also contributed to this effort, by taking on additional responsibilities as needed. Our staff fully participated in the regional workshops and their contributions not only made a difference in our state comments and consultative report, but contributed in positive ways to documents approved throughout our region. I would like to thank all the NDPSC staff for their work on this case.

Since our legislature meets only once every two years, the North Dakota Legislature has not yet passed legislation that will set up the funding the NDPSC needs to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open. This issue will need to be addressed by the 2003 legislative session.

Susan E. Wefald

Susan E. Wefald, President

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Commissioner Anthony T. Clark

July 1, 2002

There are a number of reasons the conclusion of this process is a milestone. First, is simply the massive amount of work that has gone into this report and recommendation to the Federal Communications Commission. This case was first docketed on May 13, 1997, over five years ago. As of June 29, 2002, 1279 filings have been placed into the docket. Reams of paper are dedicated to one subject: finding if Qwest has opened its local network to competitors.

While the extraordinary amount of paperwork is impressive, we must remember that it is really just a representation of the amount of time and work the Commission, but most importantly, its staff, has dedicated to this topic. I would be remiss if I did not note William Binek and Patrick Fahn for special recognition. The Commission and North Dakota telephone consumers are indebted to them for their hard work and dedication. And no team of professionals works alone. The public utilities and administrative staffs have all pitched-in to help shepherd this process along.

I must also thank my fellow Commissioners, Leo Reinbold and Susan Wefald, and my predecessor, Bruce Hagen. Not only have they spent many hours researching this case, their wise choice early on, to participate fully in the regional collaboratives put us on the right course.

The regional collaborative process that was implemented in the Qwest territory is a model for other Bell Companies and for other multi-state utilities. For small states, like North Dakota, this approach was not only beneficial, it was crucial. Absent the collaboratives, it is difficult to conceive a way in which we could have expected as thorough a review as we have, while maintaining a modest budget. Furthermore, we likely would have seen far less robust involvement from the interveners and competitors had we gone it alone. No doubt the companies (Qwest and all others) discovered the same savings, not having to fight every battle in front of 14 different Commissions. These companies' involvement and commitment to the regional collaborative process

regional collaborative process has been exemplary. All participants helped make this process stronger through their advocacy. I thank them for their input.

So what will this 271 process mean for consumers? It means that competition in local phone service will be given a chance. Qwest's network is open to competitors today and the ongoing performance plan gives us reasonable assurance that it will remain so into the future. When consumers have choices, good things happen. For years, the phone company was the ultimate monopoly. But brick by brick that wall is coming down. This has been one very important step in that process. I look forward to our continuing efforts at transitioning to a fully competitive telecommunications marketplace.

Anthony T. Clark, Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

U S WEST Communications, Inc.
Section 271 Compliance
Investigation

Case No. PU-314-97-193

CONSULTATIVE REPORT OF THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

July 1, 2002

Susan E. Wefald, President
Leo M. Reinbold, Commissioner
Anthony T. Clark, Commissioner

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