

**RECEIVED**

JUL - 8 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by	)	
Qwest Communications International, Inc.	)	WC Docket 02-148
for Authorization To Provide	)	
In-Region, InterLATA Services	)	
in the States of Colorado, Idaho,	)	
Iowa, Nebraska, and North Dakota	)	

---

**IOWA UTILITIES BOARD  
WRITTEN CONSULTATION AND EVALUATION  
REGARDING QWEST COMMUNICATIONS INTERNATIONAL, INC.**

---

Diane Munns, Chairman  
Mark Lambert, IUB Member  
Elliott Smith, IUB Member

Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 50319  
(515) 281-5979

Dated: July 3, 2002

No. of Copies rec'd 2  
List ABCDE

## **I. EXECUTIVE SUMMARY**

Based on its extensive review of the record presented by Qwest Corporation (Qwest) the Iowa Utilities Board (IUB) has concluded that Qwest has adequately addressed each of the Section 271 requirements. Additionally, a review of the updated statement of generally available terms (SGAT) filed by Qwest on June 10, 2002, has been completed, and the IUB finds it to be in compliance with each of the conditional statements issued.

## **II. PROCEDURAL HISTORY**

On January 28, 1997, the IUB issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The IUB issued an order setting the procedure it intended to follow when Qwest made a filing with the IUB prior to making an Iowa Section 271 application with the Federal Communications Commission (FCC).

When Qwest filed a preliminary application with the IUB on January 31, 2000, the IUB opened an investigation docket, identified as Docket No. INU-00-2, to review the application. At the time of its application, Qwest requested a schedule be set that would allow the IUB to consider all aspects of the docket contemporaneous with the Qwest Regional Oversight Committee (ROC) operational support systems (OSS) test then scheduled for completion in September 2000.

In a filing dated May 4, 2000, Qwest encouraged the IUB to consider a multi-state process for purposes of its review of Track A (competition issues),<sup>1</sup> various aspects of each item on the 14-point competitive checklist, Section 272 (separate subsidiary) issues, and public interest considerations. Through discussions with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, and the Utah Public Service Commission, a draft procedural schedule was designed to cover most of the concepts that the IUB found necessary in such a multi-state review. The IUB issued an order seeking comments from the participants to the investigatory docket regarding the use of a multi-state review process as detailed in the draft procedural schedule.

The IUB issued an order on August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. Section 271 would be through participation in the multi-state workshop process. The order contained a procedural schedule to which many changes were made as necessitated by the process.

The multi-state workshop process was successful in narrowing and resolving many of the Section 271 issues that did not require state-specific information. Following evidentiary workshops, which included a total of 38

---

<sup>1</sup> See 47 U.S.C. § 271(c)(1)(A).

hearing days, The Liberty Consulting Group (Liberty)<sup>2</sup> issued a total of five separate reports containing proposed resolutions for each impasse issue related to the checklist items. As specified by the IUB, following the filing of each of the reports by Liberty, participants were permitted to file comments or briefs addressing the issues that remained in dispute. Following the issuance of each of the individual reports, the IUB reviewed the record, the report filed by Liberty, and the post-report filings before issuing a conditional statement regarding each of the checklist items. Each of the conditional statements issued by the IUB contained a discussion of each issue remaining at impasse, in addition to a determination by the IUB of each issue.

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. Between October of 2000 and May of 2001, five separate multi-day workshops were convened, numerous conference calls were placed, and a large quantity of information, proposals, and supporting data were exchanged and reviewed in an attempt to create a "consensus plan."

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.

---

<sup>2</sup> The Liberty Consulting Group was retained to assist the state commissions collectively by

A final collaborative summary was prepared by MTG Consulting (MTG) and the National Regulatory Research Institute (NRRRI) and distributed on June 5, 2001. This summary document contained a list of agreements that had been reached through the collaborative process as well as a list of unresolved issues.<sup>3</sup>

A telephonic procedural conference was held on August 3, 2001, by Liberty to discuss the possibility of utilizing the multi-state checklist compliance proceedings (seven state commissions were at that time participating) to consider the Section 271-affecting aspects of the performance assurance plan that Qwest intended to file in each state. Ultimately, the seven multi-state workshop states became a nine-state workshop collaborative, with the Washington Utilities and Transportation Commission and the Nebraska Public Service Commission joining the effort.

Procedures were established to allow all participants to file comments and testimony in response to the proposed Qwest performance assurance plan (QPAP), which was filed on or about July 16, 2001, in substantially the same form with all nine collaborating state commissions. Qwest was then permitted to file pre-hearing responses to those comments.

Hearings were scheduled and held during the weeks of August 13 and August 27, 2001. Those hearings included direct, rebuttal, and surrebuttal testimony. In all, eleven witnesses testified during seven days of hearings.

---

making recommendations for resolution of impasse issues.

Following the hearings, briefs and reply briefs were filed and considered by Liberty, culminating in the filing of a sixth report covering public interest and performance assurance plan issues. Again following the same process as was used in evaluating impasse issues related to the checklist items, the IUB afforded participants an opportunity to file responsive comments to the Liberty report. It then considered the record, Liberty's report and the post-report filings in making its determinations as outlined in its conditional statements on public interest and the QPAP.

The IUB 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. The consultants issued a final report, the culmination of a collaborative effort spanning two and a half years, jointly on May 28, 2002.<sup>4</sup>

The Master Test Plan for the OSS test included thirteen major testing sections covering 32 specific transaction and process tests for which results are included in the final report. The vendors initiated over 6,500 transactions to exercise Qwest's systems and processes. In addition, KPMG performed over 1,000 field observations of commercial transactions between Qwest and its

---

<sup>3</sup> This "Final Collaborative Summary" can be viewed at [http://www.nrri.ohio-state.edu/oss/Post271/Post271/final\\_report.pdf](http://www.nrri.ohio-state.edu/oss/Post271/Post271/final_report.pdf).

<sup>4</sup> Information about the ROC OSS collaborative, including the final report, can be accessed at <http://www.nrri.ohio-state.edu/oss/oss.htm>.

competitors. During testing, the vendors encountered 497 issues that were documented as observations and exceptions, all of which were investigated and closed. Of the total documented issues, 487 were resolved completely, leaving ten exceptions that were closed/unresolved with some remaining issues not fully resolved. Additionally, a performance measure audit was previously performed by Liberty with results separately published.

Throughout this process the IUB has issued a number of conditional statements resolving impasse issues. The following is a comprehensive list of the conditional statements the IUB has issued.

- Conditional Statement Regarding March 19, 2001, Report, issued June 22, 2001 – Checklist items 3, 7, 8, 9, 10, and 12. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)
  - Conditional Statement Regarding May 15, 2001, Report, issued October 12, 2001 – Checklist items 1, 11, 13, and 14. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)
  - Conditional Statement Regarding June 11, 2001, Report "Third Report," issued October 31, 2001 – Emerging Services. (Qwest Application, Iowa Appendix C, Volume 1, Tab 4)
  - Conditional Statement Regarding August 20, 2001, Report, issued December 21, 2001 – Checklist items 2, 4, 5, and 6. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)
  - Conditional Statement Regarding Public Interest and Track A, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)
  - Conditional Statement Regarding General Terms and Conditions and Order Regarding Change Management Process Comments, issued March 12, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 7)
-

- Conditional Statement Regarding 47 U.S.C. § 272 Compliance, issued April 4, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 8)
- Conditional Statement Regarding Qwest Performance Assurance Plan, issued May 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 9)
- Conditional Statement Reconsidering IUB Conditional Statement Regarding August 20, 2001, Report, issued May 9, 2002 – Enhanced Extended Links (EEL) issue. (Qwest Application, Iowa Appendix C, Volume 1, Tab 10)
- Reconsideration of Conditional Statement Regarding 47 U.S.C. § 272 Compliance, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 12)
- Reconsideration of Conditional Statement Regarding Checklist Item 14: Resale, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 11)
- Reconsideration of Conditional Statement Regarding Checklist Item 13: Reciprocal Compensation, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 14)
- Reconsideration of Conditional Statement Regarding Checklist Item 11: Local Number Portability, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 13)
- Conditional Statement Regarding Change Management Process Compliance, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 15)
- Conditional Statement Regarding Data Reconciliation of Performance Measures in the ROC OSS Test, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 16)
- Order to Consider Unfiled Agreements, issued June 7, 2002 – Relevance of unfiled agreement on the public interest determination. (Qwest Application, Iowa Appendix P, Volume 3, Tab 24)

- Conditional Statement Reconsidering Public Interest, issued June 7, 2002 – Reconsideration of price squeeze argument. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)
- Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan, issued June 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 17)
- Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry Docket, issued June 10, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)
- Order Denying Petition to Intervene and Motion to Reopen Proceedings, issued June 11, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 47)
- Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 271 Requirements, issued June 12, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 50)

### III. STATUTORY FRAMEWORK

For Qwest to be granted entry into the market for provision of in-region interLATA services it must comply with certain provisions of 47 U.S.C. § 271. A Bell Operating Company (BOC), as defined in 47 U.S.C. § 153(4) must apply to the FCC for authorization to provide interLATA services originating in any in-region state.<sup>5</sup> The FCC is required to issue a written determination on each application no later than 90 days after receiving such application.<sup>6</sup>

The FCC must also consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a

---

<sup>5</sup> 47 U.S.C. § 271(d)(1).

<sup>6</sup> *Id.* § 271(d)(3).

facilities-based competitor, or an SGAT, and that the "competitive checklist" is satisfied, either by the agreement(s) or general statement.<sup>7</sup> No standard for the consideration of a state commission's verification under Section 271(d)(2)(B) is specified. Thus, the FCC has discretion in each Section 271 proceeding to determine the amount of weight to accord the state commission's verification.<sup>8</sup> The FCC has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of Section 271 have been met.<sup>9</sup> The FCC has relied heavily on the investigation of a state commission where that examination was thorough and well documented.

Section 271 requires various findings be made before approving the entry of a BOC. To be successful, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either

---

<sup>7</sup> *Id.* § 271(d)(2)(B).

<sup>8</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3962, para. 20 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the FCC must consult with the state commissions, the statute does not require the FCC to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

<sup>9</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

Section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).<sup>10</sup> In order to obtain authorization under Section 271, the BOC must also show that: (1) it has “fully implemented the competitive checklist” contained in Section 271(c)(2)(B);<sup>11</sup> (2) the requested authorization will be carried out in accordance with the requirements of Section 272;<sup>12</sup> and (3) the BOC’s entry into the in-region interLATA market is “consistent with the public interest, convenience, and necessity.”<sup>13</sup> The statute specifies that, unless the FCC finds that each of these criteria have been satisfied, the FCC “shall not approve” the requested authorization.<sup>14</sup>

#### IV. PROCEDURAL AND ANALYTICAL FRAMEWORK

The FCC evaluates a BOC applicant's compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application is filed to determine whether the prerequisites for entry into the long distance market have been met. The FCC has described how it

---

<sup>10</sup> 47 U.S.C. § 271(d)(3)(A).

<sup>11</sup> *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

<sup>12</sup> *Id.* § 272; see *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

<sup>13</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>14</sup> *Id.* § 271(d)(3); see *SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

considers the evidence of compliance that the BOC presents in its application in its orders regarding previous applications.

As part of the determination that a BOC has satisfied the requirements of Section 271, the FCC considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B), and has indicated the BOC at all times bears the burden of proof of compliance with Section 271, even if no party challenges its compliance with a particular requirement.<sup>15</sup> In demonstrating its compliance, the FCC has stated a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.<sup>16</sup> In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.<sup>17</sup> By its June 10, 2002, updated SGAT filing, Qwest has met this requirement in Iowa.

---

<sup>15</sup> See *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd at 18374, para. 46 (2000) (*SWBT Texas Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

<sup>16</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

<sup>17</sup> See 47 U.S.C. § 271(c)(2)(B)(i), (ii).

Previous FCC orders addressing Section 271 applications have elaborated on this nondiscrimination standard.<sup>18</sup> First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself.<sup>19</sup> The ROC OSS Final Report, released May 28, 2002, by KPMG and HP included some exceptions that Qwest had elected to accept as “closed/unresolved.”

Qwest filed a summary with the IUB of the exceptions and observations that it had elected to accept with the “closed/unresolved” notation. Comments were sought and received by interested participants. The IUB determined that in each situation, the exceptions that had been detailed were not of such significance as to preclude a showing of compliance by Qwest.<sup>20</sup>

The determination of whether the statutory standard is met is ultimately a judgment the FCC must make based on its expertise in promoting competition in

---

<sup>18</sup> See *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd at 6250-51, paras. 28-29 (2001) (*SWBT Kansas/Oklahoma Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

<sup>19</sup> *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

<sup>20</sup> See Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry Docket, IUB Docket Nos. INU-00-2 and NOI-98-1, issued June 10, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)

local markets and in telecommunications regulation generally.<sup>21</sup> No specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete” has been established by the FCC.<sup>22</sup> The FCC has made it clear that it will look at each application on a case-by-case basis, considering the totality of the circumstances, including the origin and quality of the information in the record, in determining whether the nondiscrimination requirements of the Act have been met.

The FCC has found that performance measurements provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items. In its *prima facie* case in the initial application, Qwest must:

- provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- identify the facial disparities between the applicant’s performance for itself and its performance for competitors;
- explain why those facial disparities are anomalous, caused by forces beyond the applicant’s control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier’s ability to obtain and serve customers; and,
- provide the underlying data, analysis, and methodologies necessary to enable the FCC and commenters meaningfully to evaluate and contest the validity of the applicant’s explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

---

<sup>21</sup> *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

<sup>22</sup> *Id.*

The FCC has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.<sup>23</sup>

The ROC OSS testing project included a Technical Advisory Group (TAG) comprised of staff members from the thirteen participating State Commissions, as well as representatives from Qwest and many of the competitive local exchange companies (CLECs). The TAG was responsible for:

- developing the principles that were applied during the development and conduct of the collaborative test;
- developing performance measures that were used during the test; and;
- providing input on various decisions regarding test design and conduct.

Results from the ROC OSS test were released on a progressive basis, as discrete reports, at the completion of testing for specific sections of the Master Test Plan. These early releases were considered "preliminary" until they were

---

<sup>23</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15

published in the final report, allowing all the participants involved in the test to spread the review and assimilation of the test results over a longer period of time rather than a short timeframe at the end of the testing process.

When certain CLECs expressed concern about the accuracy of Qwest's reported performance results as the results related to service the CLECs were receiving, the ROC determined it would be advantageous to conduct a data reconciliation audit to test the concerns. Liberty was instructed to conduct a data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC Performance Indicator Definitions (PIDs).

Three CLECs participated in the study, AT&T, WorldCom, and Covad. These CLECs, Qwest and Liberty, spent significant time and effort resolving the specific scope of the performance measures to be included in the data reconciliation. Liberty determined the appropriate objective of the reconciliation was to answer the following question:

Does any of the information provided by the participating CLECs demonstrate inaccuracy in Qwest's reporting of performance results under the measures defined in the Performance Indicator Definitions (PID)?

Liberty filed a copy of its report with the IUB on September 25, 2001. Liberty noted in its report that the CLECs did not always clearly identify the discrepancies or the evidence upon which they based their concerns and

---

requested additional information and clarifications from the CLECs. However, the bulk of the information used in the reconciliation came from Qwest.

During its audit, Liberty issued one Exception and thirteen Observations based on its review. All fourteen discrepancies have been addressed to the satisfaction of Liberty and the final resolution was to close each exception and observation.

Liberty found that the CLECs captured data and accounted for information related to Qwest's wholesale performance measures differently from Qwest. Liberty concluded the CLECs recorded data in ways that best suited their own operational and management needs. There were instances where the CLEC did not have the systems required to track performance measure results at the level of detail required of Qwest, in addition to the constraint of not having personnel familiar with Qwest's systems.

In filings with the IUB, Qwest indicated it was already aware of some of the problems reported by Liberty. In those instances, the reconciliation process documented the resolution and made them known to interested participants. The process-type errors had solutions available through computer programming or revised data collection methods. The human errors were deemed to be correctable through the use of new job tools, revised methods and checks, and additional training. Liberty concluded that these human errors were not at such a level as to adversely impact the performance reports. Liberty did not detect any evidence that Qwest was attempting to manipulate data. Liberty concluded that

---

Qwest's performance reporting was accurately and reliably reporting its actual performance.

The reconciliation process was a long and arduous undertaking by all participants and appears to have resulted in all interested observers being assured that Qwest's performance reporting is accurate and reliable. The process involved the ROC TAG reviewing the exception and observations Liberty filed relating to the data reconciliation audit, and noting the changes Qwest implemented, before accepting Liberty's recommendation to close all of these matters. Although Iowa specific data was not included in the data reconciliation, the IUB accepted the reports filed by Liberty as adequate without requiring a separate data reconciliation of Iowa data.<sup>24</sup>

#### **IV. COMPLIANCE WITH ENTRY REQUIREMENTS — SECTIONS 271(C)(1)(A) & 271(C)(1)(B)**

In order for the FCC to approve Qwest's application to provide in-region, interLATA services, Qwest must first demonstrate that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).<sup>25</sup> To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."<sup>26</sup>

---

<sup>24</sup> See Conditional Statement Regarding Data Reconciliation of Performance Measures in the ROC OSS Test, IUB Docket No. INU-00-2, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 16)

<sup>25</sup> See 47 U.S.C. § 271(d)(3)(A).

<sup>26</sup> *Id.*

Qwest presented evidence in IUB Docket No. INU-00-2 that as of April 30, 2001, it had entered into 94 binding and approved interconnection agreements in Iowa.<sup>27</sup> No participant contested this aspect of Qwest's Track A compliance.

Qwest also offered evidence that, as of April 30, 2001, it was providing access and interconnection to 14 Iowa CLECs. As of the same date, it had leased 138,192 unbundled loops to competitors.<sup>28</sup> No party contested this aspect of Qwest's Track A compliance.

The Act states that “such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.”<sup>29</sup> The FCC concluded in the *Ameritech Michigan Order* that Section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.<sup>30</sup>

Iowa is able to rely on the actual numbers provided by one CLEC to meet the Section 271(c)(1)(A) requirement. The confidential record indicates that McLeodUSA is providing service to both residential and business customers at

---

<sup>27</sup> Exhibit S8-QWE-DLT-9 (exhibit numbers refer to exhibits to IUB Docket No. INU-00-2).

<sup>28</sup> Exhibit S8-QWE-DLT-9.

<sup>29</sup> See 47 U.S.C. § 271(d)(3)(A).

<sup>30</sup> See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd at 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket

more than "de minimis" levels. Alternatively, even without the specific actual numbers found in the confidential record, customer counts of multiple CLECs would be sufficient to meet this requirement in Iowa.<sup>31</sup>

As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under Section 271(d)(3)(A)(ii), the FCC shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist."<sup>32</sup> Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.<sup>33</sup> For states such as Iowa, Track B does not apply because competitors already exist.

---

No. 98-121, 13 FCC Rcd at 20633-35, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

<sup>31</sup> See Conditional Statement Regarding Public Interest and Track A, IUB Docket No. INU-00-2, pp. 11-13, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

<sup>32</sup> 47 U.S.C. § 271(d)(3)(A)(ii).

<sup>33</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. See 47 U.S.C. § 271(c)(1)(B); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.