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August 21, 2002

Ex Parte

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

Re: *Application of Qwest Communications International, Inc.
To Provide In-Region InterLATA Services in the States of Colorado,
Idaho, Iowa, Nebraska and North Dakota, WC Docket No. 02-148*

*Application of Qwest Communications International, Inc.
To Provide In-Region InterLATA Services in the States of Montana,
Utah, Washington & Wyoming, WC Docket No. 02-189*

Dear Ms. Dortch:

At the request of the Wireline Competition Bureau, Qwest hereby submits for the record the following documents relating to unfiled agreements.

- (1) Order Denying Motion, *In the Matter of the Colorado Public Utilities Commission's Recommendation to the Federal Communications Commission Regarding Qwest Corporation's Provision of In-Region, InterLATA Services in Colorado*, Colorado Public Utilities Comm'n, Docket No. 02M-260T (June 11, 2002). See Attachment #1, pp. 3-4.
- (2) 40th Supplemental Order Denying Petition for Reconsideration, *In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*, Docket No. UT-003022; *In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Washington Utilities and Transportation Comm'n, Docket No. UT-003040 (July 15, 2002). See Attachment #2, pp. 4-5.
- (3) Order to Consider Unfiled Agreements, *In re U S WEST Communications, Inc., n/k/a Qwest Corporation*, Iowa Utilities Board, Docket Nos. INU-00-2, SPU-00-11 (June 7, 2002). See Attachment #3, pp. 10-11.

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(4) Notice of Commission Action, *In the Matter of the Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996*, Montana Public Service Comm'n, Docket No. D2000.5.70 (June 3, 2002). See Attachment #4.

(5) Motion to Reopen 271 Proceedings Denied, *In the Matter of Qwest Corporation, Denver, Colorado, filing its notice of intention to file Section 271(c) application with the FCC and request for Commission to verify Qwest Corporation's compliance with Section 271(c)*, Nebraska Public Service Comm'n, Application No. C-1830 (June 12, 2002). See Attachment #5, pp. 2-3.

(6) Transcript of Special Meeting, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, North Dakota Public Service Comm'n, Case No. PU-314-97-193 (June 6, 2002). See Attachment #6, pp. 3-6.

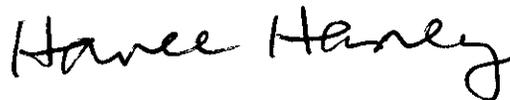
Qwest's Reply Comments, filed on July 29, 2002, mistakenly referenced the June 13, 2002 Transcript of Special Meeting, *U S WEST Communications, Inc. Section 271 Compliance Investigation*, North Dakota Public Service Comm'n, Case No. PU-314-97-193 at footnote 117, page 130. The correct transcript is referenced above. Attachment #7 contains a corrected page 130 of the Reply Comments.

(7) Order on AT&T Motion to Reopen Proceedings, *In the Matter of the Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996, Wyoming's Participation in a Multi-State Section 271 Process, and Approval of its Statement of Generally Available Terms*, Wyoming Public Service Comm'n, Docket No. 70000-TA-00-599 (June 18, 2002). See Attachment #8, pp. 3-4.

(8) Final Recommendation Report of the Commission, *In the Matter of the Investigation into the Entry of Qwest Corporation, formerly known as U S WEST Communications, Inc., into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996*, Oregon Public Utility Comm'n, UM 823 (August 19, 2002). See Attachment #9, p. 19.

The twenty-page limit does not apply as set forth in DA 02-1390 and DA 02-1666.

Sincerely,



cc: M. Carowitz
E. Yockus
G. Remondino

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August 21, 2002
Page 3

M. Cohen
R. Harsch
J. Jewel
P. Baker
C. Post
P. Fahn
B. Smith
J. Myles
J. Stanley
S. Vick
J. Orchard
C. Washburn
S. Oxley

Attachment 1

Decision No. C02-649

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02M-260T

IN THE MATTER OF THE COLORADO PUBLIC UTILITIES COMMISSION'S
RECOMMENDATION TO THE FEDERAL COMMUNICATIONS COMMISSION
REGARDING QWEST CORPORATION'S PROVISION OF IN-REGION, INTERLATA
SERVICES IN COLORADO.

ORDER DENYING MOTION

Mailed Date: June 11, 2002

Adopted Date: May 29, 2002

I. BY THE COMMISSION

Statement, Findings, and Conclusions

1. On May 13, 2002, AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Colorado ("AT&T") filed a Motion to Reopen Proceedings in Docket Nos. 97I-198T and 02M-260T. In its motion, AT&T requests this Commission reopen the record in the § 271 proceedings in order to allow admission of additional evidence relating to certain unfiled, secret agreements between Qwest Corporation ("Qwest") and some new entrants.

2. AT&T further states that none of the agreements are currently on the record in Colorado, and they should be considered in these proceedings because they directly relate and refer to Qwest's discriminatory treatment in the provisioning of

interconnection, violations of federal law, and the silencing of Qwest's opponents in these and other § 271 proceedings.

3. AT&T's motion seeks to reopen these proceedings so that the Commission may take further evidence and decide whether and to what extent these agreements may have hindered or otherwise adversely affected the Commission's decision-making on various checklist items, and the public interest determination.

4. On May 16, 2002, Eschelon Telecom of Colorado, Inc. ("Eschelon"), filed comments in the form of a letter addressed to Mr. Bruce Smith, Director of the Colorado Public Utilities Commission. In this letter, Eschelon states that it agrees with AT&T's assessment that the agreements should have been filed by Qwest with the various state commissions. Eschelon states that the Commission may want to reopen proceedings to consider these matters.

5. On May 28, 2002, Qwest filed its response in opposition to AT&T's motion to reopen the proceedings in Docket No. 97I-198T. In this response, Qwest asserts that AT&T's argument regarding these agreements, Qwest's response to that argument and five of the agreements at issue (Exhibits 2 through 6) are already in the Colorado record from the Public Interest *en banc* workshop held May 7 through 9, 2002.

6. In addition, Qwest states that it has filed a Petition for Declaratory Ruling before the Federal

Communications Commission ("FCC"), which the FCC has accepted for review and comment. The Petition seeks clarification on the applicability of the 90-day pre-approval process of § 252(a) of the Telecommunications Act of 1996. Once definitive guidance is given by the FCC, Qwest commits to applying that threshold standard to all its agreements.

7. In the meantime, Qwest has committed voluntarily to provide copies of all contract, agreements, and letters of understanding with competitive local exchange carriers that create forward-looking obligations to meet the requirements of § 252(a). Qwest will work with state commissions and their staffs to solicit guidance on the treatment of agreements that may be in a "gray" area of this standard. Finally, Qwest reports that it has begun forming a committee of senior managers for various parts of its wholesale business to review all agreements involving Qwest's in-region wholesale activities and ensure that Qwest complies with its current commitments and any ruling from the FCC.

8. We deny AT&T's motion. AT&T has had ample opportunity to present these facts into our § 271 record, and in fact has entered five of the agreements at issue as well as approximately a day of oral argument by AT&T attorney Mr. Gary Witt and rebuttal oral argument by Qwest attorney Mr. Todd Lundy. In addition, Commission Staff and its counsel

have been conducting their own informal investigation of similar agreements executed in Colorado. This is an ongoing investigation that will run its own course separate and apart from the § 271 proceedings.

9. The merits of the agreements and arguments already in the record will be discussed and a decision will be reached on their treatment during the Commission's final deliberations meeting in the 02M-260T docket.

II. ORDER

A. The Commission Orders That:

1. The AT&T Communications of the Mountain States, Inc., and AT&T Local Services on behalf of TCG Colorado Motion to Reopen Proceedings is denied.

2. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
May 29, 2002.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

POLLY PAGE

JIM DYER

Commissioners

Attachment 2

SERVICE DATE
JUL 15 2002

RECEIVED
JUL 16 2002

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Investigation Into)

DOCKET NO. UT-003022

QWEST
POLICY AND LAW DEPT.

U S WEST COMMUNICATIONS, INC.'s)

Compliance With Section 271 of the)
Telecommunications Act of 1996)

DOCKET NO. UT-003040

In the Matter of)

U S WEST COMMUNICATIONS, INC.'s)

40th SUPPLEMENTAL ORDER
DENYING PETITION FOR
RECONSIDERATION

Statement of Generally Available Terms)
Pursuant to Section 252(f) of the)
Telecommunications Act of 1996)

I. SYNOPSIS

1 *The Commission denies AT&T's and Covad's petition for reconsideration of the Commission's 39th Supplemental Order. There is no merit in delaying the Commission's evaluation of Qwest's section 271 application to the FCC in order to conduct additional investigations or to await the outcome of federal or congressional investigations.*

II. BACKGROUND AND PROCEDURAL HISTORY

2 On July 1, 2002, the Commission entered its 39th Supplemental Order: *Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest (39th Supplemental Order)*. The 39th Supplemental Order was the Commission's final order in its review of the compliance of Qwest Corporation (Qwest), formerly known as U S WEST

Communications, Inc. (U S WEST),¹ with the requirements of section 271 of the Telecommunications Act of 1996 (the Act),² and of Qwest's Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act. In the 39th Supplemental Order, the Commission found that Qwest has satisfied all of the requirements under section 271 of the Telecommunications Act, including the requirement in section 271(d)(3)(C) that an application pursuant to section 271 is "consistent with the public interest, convenience and necessity."

3 On July 12, 2002, AT&T Communications of the Pacific Northwest, Inc., AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively AT&T), and Covad Communications Company (Covad) filed a petition for reconsideration of the 39th Supplemental Order pursuant to WAC 480-09-810. Specifically, AT&T and Covad assert that the Commission should withdraw its favorable recommendation of Qwest's application to the FCC in light of events occurring since the Commission entered the 39th Supplemental Order, i.e., a criminal investigation of Qwest by the United States Attorney's Office, an investigation by the House Energy and Commerce Committee concerning Qwest's accounting practices, and the Arizona Commission's suspension of its section 271 proceeding based on these events and the concern over agreements between Qwest and CLECs that were not filed with state commissions.

III. DISCUSSION

4 This Commission's consolidated proceeding to review Qwest's compliance with section 271 and review the provisions of Qwest's SGAT primarily addressed the question of whether Qwest has taken the necessary steps to open its local exchange market to competition. One of the issues the Commission considered in answering that question was whether an application by Qwest is in the public interest. As we stated in our analysis of the public interest issue, the FCC looks to whether the local market is open to competition, whether there is sufficient assurance that the local market will remain open to competition after a section 271 application is granted, and finally, whether any "other relevant factors exist that would frustrate the

¹ After this proceeding began, U S WEST merged and has become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this Order.

² Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.*

congressional intent that markets be open.” 39th Supplemental Order, ¶¶230, 232, quoting *Georgia/Louisiana II Order*, ¶71.³

5 AT&T and Covad request in their petition for reconsideration that the Commission withdraw its favorable recommendation to the FCC. AT&T and Covad base their petition for reconsideration on the last prong of the public interest test, and assert that the pending criminal investigation, the congressional investigation, and the agreements between Qwest and CLECs that have not been filed with state commissions are “highly relevant to the section 271 inquiry.” The question, however, is not whether the events or allegations are relevant to the section 271 inquiry generally, but whether they are relevant to the third prong, i.e., whether they would frustrate the congressional intent that the markets be open.

6 The U.S. Attorney’s Office has not sought or obtained an indictment as a result of its investigation into Qwest’s business practices. In fact, very little is known about this investigation. A criminal investigation concerning Qwest’s accounting practices, and a congressional investigation into the same matter are not relevant to the question of whether Qwest’s local markets are open to competition, or will remain open to competition. We do not condone any improper accounting practices by Qwest or any other corporation. However, we do not believe that ongoing investigations into such practices are a proper basis for delaying or suspending this state’s evaluation of Qwest’s application to the FCC. If the investigations demonstrate that Qwest has acted improperly, penalties can be imposed to address any improprieties.

7 The agreements between Qwest and CLECs that had not been filed with state commissions could be relevant to whether the congressional intent that local markets be open would be frustrated, but no party has made a sufficient showing or demonstration that the agreements have had such an effect. In our 39th Supplemental Order, we found that no party demonstrated that “interconnection agreements should have been filed or are discriminatory, or that this Commission should delay or cease our review of Qwest’s compliance with the requirements of section 271.” 39th Supplemental Order, ¶293. We stated that “This Commission will not presume that the agreements are invalid or unlawful.” *Id.* We further stated that the Commission

³ *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, Memorandum Opinion and Order, CC Docket No. 02-35, FCC 02-147 (rel. May 15, 2002) (*Georgia/Louisiana II Order*).

would establish a docket to allow Qwest to continue to file any unfiled agreements or amendments to interconnection agreements, and would discuss how the Commission would address the agreements within that docket. *Id.*, ¶295.

8 AT&T and Covad have not provided any additional evidence or argument in their petition for reconsideration that persuades us to modify our determination in the 39th Supplemental Order. Qwest has filed the agreements at issue with the Commission, and has agreed to continue to do so. If after considering a complaint by a third-party or upon the Commission's own motion concerning these agreements, the Commission determines that Qwest has violated federal or state law, then the Commission can and will impose appropriate penalties. This issue is also properly before the FCC. Qwest has filed a petition for declaratory ruling with the FCC concerning the applicability of the 90-day pre-approval process under section 252 concerning these agreements.

9 Finally, as we stated above, the focus of our inquiry in this proceeding is whether Qwest has taken the necessary steps to open its local exchange market to competition. We have found that Qwest has opened its market to competition. We are not persuaded, after considering the allegations of the parties, that the unfiled agreements or ongoing investigations have affected whether the local market is open to competition. If Qwest does discriminate against CLECs in the future, that treatment will come to light through the QPAP and could allow the FCC to withdraw any 271 authority granted to Qwest. That possibility should be sufficient to deter any discriminatory behavior by Qwest.

10 It must be remembered that this Commission's role in the section 271 process is to consult with the FCC to "verify the compliance of the Bell operating company with the requirements of [section 271] (c)." 47 U.S.C § 271(2)(B). We take this role very seriously, and believe that we have verified Qwest's compliance with the requirements of section 271 through the intensive workshop and hearing process of more than two years. That process involved gathering extensive evidence, allowing the parties to file extensive pleadings and briefs on all issues, and entering numerous orders, including orders on reconsideration, on the section 271 requirements. AT&T and Covad have not presented any new evidence or arguments that persuade us to modify our determination in the 39th Supplemental Order that Qwest has met the requirements of section 271. We deny AT&T and Covad's petition for reconsideration.

IV. ORDER

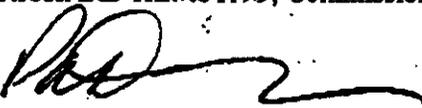
11 IT IS ORDERED That the petition for reconsideration of the 39th *Supplemental Order* filed by AT&T and Covad is denied.

DATED at Olympia, Washington and effective this 15th day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


MARILYN SHOWALTER, Chairwoman


RICHARD HEMSTAD, Commissioner


PATRICK J. OSHIE, Commissioner

Attachment 3



REC'D JUN 20 2002

STATE OF IOWA

THOMAS J. VILSACK
GOVERNOR
SALLY J. PEDERSON
LT. GOVERNOR

IOWA UTILITIES BOARD
IOWA DEPARTMENT OF COMMERCE

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U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION

Docket Nos. INU-00-2, SPU-00-11

"ORDER TO CONSIDER UNFILED AGREEMENTS"

Issued June 7, 2002

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CERTIFICATE

The undersigned hereby certifies that the foregoing document has been served upon all parties of record in this proceeding in accordance with the requirements of the rules of the Iowa Utilities Board.

Dated June 7, 2002
Shelby L. Ferri

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

U S WEST COMMUNICATIONS, INC.,
n/k/a QWEST CORPORATION

DOCKET NOS. INU-00-2
SPU-00-11

ORDER TO CONSIDER UNFILED AGREEMENTS

(Issued June 7 , 2002)

On February 10, 2000, the Utilities Board (Board) 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 investigation was identified as Docket No. INU-00-2.

The Board issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with track A (competition issues), various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations would be through participation in a multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, Wyoming Public Service Commission, and the Utah Public Service Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

On October 22, 2001, The Liberty Consulting Group (Liberty) filed a report addressing issues raised by workshop participants related to the public interest of Qwest's future entry into the in-region InterLATA market.¹ On January 25, 2002, the Board issued a conditional statement concluding that, subject to the recommendations contained in its conditional statement, Qwest had conditionally satisfied the issues relating to public interest.

On May 14, 2002, AT&T Communications of the Midwest, Inc., and AT&T Local Services on behalf of TCG Omaha (collectively AT&T) filed a motion to reopen proceedings (Motion). AT&T requested the Board reopen the record in the section 271 proceedings in order to allow admission of additional evidence relating to certain unfiled agreements between Qwest and some new entrants. According to the Motion, the unfiled agreements relate directly to the provision of interconnection services by Qwest and carry public interest implications.

By way of background, AT&T noted that the Minnesota Department of Commerce filed a complaint against Qwest in February 2002. The complaint alleged that Qwest entered into a series of confidential agreements with competitive local exchange carriers (CLECs), which were not filed with the Minnesota Public Utilities Commission. The Minnesota complaint sought penalties and other remedies against Qwest.

¹ This report was prepared by the "outside consultant," The Liberty Consulting Group (Liberty), which was retained to assist the state commissions collectively by making recommendations for resolution of impasse issues.

AT&T submits the unfiled agreements should be considered in the Board's section 271 proceedings, because they directly relate to: a) Qwest's unwillingness to provide interconnection on a nondiscriminatory basis; b) violations of federal law by Qwest, which carry public interest implications; and c) the silencing of Qwest's opponents in these and other section 271 proceedings.² Thus, AT&T seeks to reopen the proceedings so the Board can decide whether the unfiled agreements have hindered the Board's decision-making on various checklist items and the public interest inquiry.

On May 22, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to AT&T's motion to reopen proceedings (Response). The Response acknowledges the proceeding identified as Docket No. FCU-02-2 which is a formal complaint addressing the issues pertaining to unfiled agreements in Iowa. The April 1, 2002, "Order Docketing Complaint, Establishing Briefing Schedule, and Denying Motion to Dismiss" deferred factual investigation into AT&T's allegations until after the Board rules on the legal question of the scope of the obligation to file interconnection agreements pursuant to federal law. Consumer Advocate claims the relevance of the allegations to the public interest requirement of section 271 cannot be ignored.

Consumer Advocate points out that it has repeatedly urged that Congress intended the Federal Communications Commission (FCC) to perform a broad public

² Attached to AT&T's Motion is Exhibit A, the Affidavit of J. Jeffery Oxley, Eschelon Telecom, Inc., and dated April 18, 2002. This affidavit was originally filed in the Minnesota complaint proceeding.

interest analysis as to whether a proposed action would further the purposes of the Act. Consumer Advocate further noted the Supreme Court rejected a "cramping" of a statutory public interest requirement in favor of an "expansive" one that includes "standards for judgment adequately related in their application to the problem to be solved."³

The response from Consumer Advocate also mentions the December 28, 2001, *Sprint* remand pertaining to Southwestern Bell Telephone Company's (SWBT) 271 applications in Kansas and Oklahoma.⁴ In that case, the court suggested the FCC erroneously gave the public interest argument of opposing parties "rather a brush-off." Consumer Advocate has asked the Board to reconsider its public interest analysis in light of *Sprint*.

The allegations of secret agreements suggest that Iowa's meager local competition may be the product of collusive conduct. The allegations bear directly and materially upon attainment of Congressional purpose. If they are founded, they undercut Qwest's claim that granting 271 authority is in the public interest.

On May 22, 2002, Qwest filed its opposition to AT&T's motion to reopen proceedings (Opposition), and on May 24, 2002, Qwest filed its response to Consumer Advocate (Qwest Response). Qwest's Opposition states that AT&T is

³ *National Broadcasting Co. v. United States*, 319 U.S. 190, 217-20 (1943).

⁴ *Sprint Communications Co. L.P. v. Federal Communications Comm'n*, 274 F.3d 549 (D.C. Cir. 2001) ("Sprint")

attempting to inject complex, unrelated, and unresolved issues into this docket. As state commissions, the FCC, and reviewing courts have repeatedly emphasized, matters such as these are best addressed in proceedings separate from section 271 applications. To the extent these issues warrant review and investigation in Iowa, the Board has already docketed FCU-02-2 for that purpose.

Qwest argues that AT&T's Motion is overreaching. Although Qwest has routinely filed hundreds of interconnection agreements pursuant to section 252, AT&T does not assert that each contract between an ILEC and a CLEC is subject to the section 252 filing requirements. AT&T itself expects certain of its contractual arrangements with Qwest to be confidential and not subject to filing. At most, Qwest maintains AT&T is simply disputing Qwest's line drawing in a relative handful of situations where Qwest did not make a filing.

Qwest argues that because of the previous lack of a defined legal standard, these issues are particularly inappropriate for consideration in this section 271 proceeding. The Board should deny AT&T's obvious attempt to delay the 271 process. These issues are best addressed in another docket, which has been established by the Board for that purpose.

Qwest notes that AT&T's Motion relies heavily upon allegations regarding Qwest agreements with Eschelon Telecom, Inc. (Eschelon). Eschelon, however, does not provide services in Iowa; thus, Eschelon's agreements provide no basis for evaluating the conduct of either Qwest or Eschelon in Iowa.

Qwest notes that Consumer Advocate believes the allegations being considered in Docket No. FCU-02-2 "bear directly and materially" on the public interest inquiry. Qwest disputes the accuracy of that suggestion. The unfiled agreements involve a good-faith dispute regarding the scope of Qwest and CLECs' obligations to file certain intercarrier agreements under 47 U.S.C. § 252(a). Qwest has petitioned the FCC for a declaratory ruling to clarify for the entire industry what section 252 requires. Qwest maintains there is no reason to bring this dispute into the section 271 review of this Board while the FCC petition is pending.

Additionally, according to Qwest, there is nothing more to be learned in the public interest inquiry, because the issue has been resolved. Until the FCC rules on Qwest's petition, Qwest has committed to file with the Board all contracts, agreements, and letters of understanding with CLECs that create obligations to meet the requirements of section 251(b) or (c).⁵

AT&T's Motion makes no mention of Docket No. FCU-02-2, the Iowa proceeding previously docketed to examine allegations of unfiled interconnection agreements. An uninformed reader of AT&T's Motion might conclude that the Board has taken no action to investigate and resolve the matter.

Consumer Advocate argues the relevance of allegations in Docket No. FCU-02-2 to the "public interest requirement of section 271 . . . cannot reasonably be ignored." Additionally, Consumer Advocate continues to argue, in the wake of the

⁵ See May 10, 2002, letter from Mr. R. Steven Davis, Qwest Corporation, to the Board, attached as Exhibit 1 to Qwest's May 22, 2002, Opposition.

Sprint remand, that the Board must perform a "broad" and "expansive" public interest re-analysis.

Consumer Advocate states that the allegations of unfiled agreements suggest the "meager" local competition in Iowa may be the product of collusive conduct. Consumer Advocate urges the Board to continue to investigate in the public interest inquiry the allegations brought to light, in Docket No. FCU-02-2, before reaching a final conclusion about Qwest's 271 application.

AT&T's Motion and Consumer Advocate's Response were written prior to the Board's recent order in Docket No. FCU-02-2.⁶ In that order, the Board reached tentative findings that the unfiled agreements were in fact interconnection agreements - subject to federal and Iowa filing requirements. The order required Qwest to file any other unfiled interconnection agreements with the Board for public notice, review, and approval. Qwest was also put on notice that it would be subject to civil penalties for future violations. To a large extent, the order puts to rest the concern implied in AT&T's Motion; namely that the Board needs to address the allegations of unfiled interconnection agreements.

Consumer Advocate's concern that the *Sprint* Remand requires the Board to broaden its public interest analysis is not addressed in the Docket No. FCU-02-2 order. However, it is addressed in the Board's June 7, 2002, "Conditional Statement

⁶ See *Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing*, Docket No. FCU-02-2, issued May 29, 2002.

Reconsidering Public Interest." There the Board determined that the *Sprint* remand is a narrow remand only requiring that the FCC further "pursue [AT&T's] price squeeze claim, or at the very least explain why the public interest does not require it to do so."⁷ Thus, the Board declined to adopt Consumer Advocate's position that:

[T]his Board, in light of *Sprint*, should tell the FCC it must reevaluate its public interest requirements and do so in a manner that's consistent with . . . what's eventually going to be told to it directly, [that] has indirectly been told to it by the D.C. Circuit in *Sprint*.⁸

For its part, Qwest goes too far in downplaying any public interest implications of the unfiled agreements when it quotes the recent *BellSouth Georgia/Louisiana 271 Order*. There the FCC stated that a 271 docket is not the place "to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors" under section 251 and 252; nor is it the place to duplicate "open issues before the [FCC]" in separate dockets.⁹

Paragraph 208 referenced an interconnection dispute between BellSouth and two CLECs over the activation of NPA/NXX codes in BellSouth's switches. The FCC noted that this issue was before it in another proceeding, and the FCC would not deny 271 approval because the other proceeding was not complete.

Qwest failed to quote the FCC's earlier pronouncement in the *Ameritech Michigan 271 Order*, which appears to be more relevant to the issue at hand:

⁷ *Sprint*, 274 F.3d, at 554.

⁸ March 14, 2002, Oral Argument, Docket Nos. INU-00-2 and SPU-00-11, Tr. p. 28.

⁹ *BellSouth Georgia/Louisiana 271 Order* released May 15, 2002, ¶ 208.

Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anti-competitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received InterLATA authority.¹⁰

Still, this quote, like AT&T's Motion and Consumer Advocate's Response, does not prescribe a cure if a BOC has violated a telecommunications regulation. Implicitly the cure that AT&T and Consumer Advocate prescribe is a state of "public interest limbo" for Qwest.

In order for Qwest to move beyond a state of "public interest limbo," the Board has previously adopted a standard, "that past behavior must be predictive of future behavior."¹¹ This standard is met by the Board's May 29, 2002, order in Docket No. FCU-02-2. As noted above, Qwest was put on notice that it would be subject to civil penalties for failing to file agreements in the future. The prospect of significant monetary penalties should act as a strong deterrent against future violations.

¹⁰ *Ameritech Michigan 271 Order* released August 19, 1997, ¶ 397.

¹¹ *Conditional Statement Regarding Public Interest and Track A*, Docket Nos. INU-00-2 and SPU-00-11, issued January 25, 2002, p. 27.

The resolution of this issue in Docket No. FCU-02-2 would appear to serve the objectives of the FCC. Most recently the FCC indicated the following about the public interest inquiry:

Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.¹²

The FCC appears to regard the goal of the public interest inquiry as an opportunity to identify and correct problems, beyond the competitive checklist, that would impede the opening of local markets to competition. As for Qwest's unfiled agreements, it would seem that the Board has already acted to accomplish that goal in Docket No. FCU-02-2.

Finally, AT&T argues the unfiled agreements should be considered in the 271 proceeding because they directly relate to the silencing of Qwest's opponents. However, there is no indication or evidence that the process was not complete and exhaustive with respect to the checklist items, even with the absence of certain CLECs. The ROC OSS test was not dependent on the CLEC participation because the focus was on a pseudo-CLEC. AT&T and the participating CLECs were vigorous in their participation and there is no way of knowing, even without the agreement, that other CLECs would have had the inclination to participate.

¹² *BellSouth Georgia/Louisiana 271 Order* released May 15, 2002, ¶ 280.

IT IS THEREFORE ORDERED:

1. The motion to reopen the proceedings to consider unfiled agreements filed by AT&T on May 14, 2002, and the supplemental request filed by Consumer Advocate on May 22, 2002, are denied.

2. Any responses to this statement and all future filings and Board orders or statements in this docket must be filed no later than close of business on the third business day following the filing or issuance.

UTILITIES BOARD

Hlane Myers
Mark O. Lambert

ATTEST:

Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 7th day of June, 2002.

Attachment 4

Service Date: June 3, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Investigation) UTILITY DIVISION
Into Qwest Corporation's)
Compliance with Section 271 of the) DOCKET NO. D2000.5.70
Telecommunications Act of 1996)

NOTICE OF COMMISSION ACTION

On May 30, 2002, at a regularly scheduled work session, the Montana Public Service Commission (Commission) acted on AT&T's motion to reopen the proceedings in this docket.

AT&T's motion to reopen the proceedings in this docket is denied. AT&T is not precluded by this Action from filing any appropriate complaint in a proper venue regarding the allegations contained in its motion.

BY THE MONTANA PUBLIC SERVICE COMMISSION

- GARY FELAND, Chairman
- JAY STOVALL, Vice Chairman
- BOB ANDERSON, Commissioner
- MATT BRAINARD, Commissioner
- BOB ROWE, Commissioner

Attachment 5

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Qwest)	Application No. C-1830
Corporation, Denver, Colorado,)	
filing its notice of intention)	
to file Section 271(c))	MOTION TO REOPEN
application with the FCC and)	271 PROCEEDINGS
request for Commission to verify)	DENIED
Qwest Corporation's compliance)	
with Section 271(c).)	Entered: June 12, 2002

BY THE COMMISSION:

1. On May 14, 2002, AT&T Communications of the Midwest, Inc. and AT&T Local Services, on behalf of TCG Omaha (collectively AT&T), filed with this Commission a Motion to Reopen Proceedings in the above-referenced docket. In said Motion, AT&T sought an order from this Commission reopening the record in the 271 proceedings in order to allow admission of additional evidence relating to certain alleged unfiled, secret agreements between Qwest Corporation (formerly known as US West) and some new entrants. AT&T alleged that such agreements related directly to the provisioning of interconnection services by Qwest, but were not filed as they should have been in accordance with 47 U.S.C. Sections 251 and 252.

2. On May 20, 2002, Community Internet Systems, Inc. filed a Concurrence with AT&T's Motion to Reopen Proceedings.

3. Qwest filed its Opposition to AT&T's Motion on May 21, 2002, objecting to AT&T's attempt to delay the Section 271 proceeding. According to Qwest, the Federal Communications Commission (FCC) and reviewing courts have repeatedly emphasized that matters such as those alleged by AT&T are best addressed in proceedings separate from Section 271.

4. An oral argument was held on May 29, 2002, at 11:00 a.m. in the Commission Hearing Room.

O P I N I O N A N D F I N D I N G S

5. The Commission is greatly concerned about the issues raised by AT&T in its recent filings concerning alleged unfiled, secret Qwest agreements in Minnesota. Any findings that these allegations are true, regardless of penalty or lack thereof, bring into question the participants' long-term commitment to fulfill the dictates of Congress to ensure markets are equally accessible to all parties.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-1830

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6. According to arguments by Qwest before the Commission, both parties have engaged in such "secret agreements" under the guise of the need for confidentiality. Unlike in Minnesota and other states, the Nebraska Commission has no other evidence of this allegation. While Covad Communications Company and McLeodUSA do have lawfully filed agreements in the state of Nebraska, this Commission has no evidence that secret agreements exist in Nebraska with any of the parties included in the investigations in Minnesota and other states. We only have the statement by a Qwest attorney who, in answering a question of a Commissioner, pointed a finger at others as they included themselves.

7. This Commission would find the existence of secret agreements, if they are contrary to the public interest, abhorrent. The 1996 Congress, which passed the Telecommunications Act (the Act), expected local telecommunications companies to open their markets in exchange for the prize of access to long distance networks. They did not expect gamesmanship and violations of the law to flaunt the intent of the Act. If the allegations are true, it is an act of arrogance and utter disregard for the law.

8. If true, such secret agreements and any similar actions, which are contrary to the public interest, taint the 271 process throughout the entire 14-state region and raise questions as to the intent and will to cooperatively work to maintain existing markets and to continue efforts for future competitive entrants.

9. In response to the allegations, Qwest filed a petition with the FCC on April 23, 2002, asking the FCC to define once and for all the scope of incumbent local exchange-competitive local exchange agreements. The FCC has yet to act on the petition.

10. In summation, while these matters are deeply troubling, they serve as notice that ongoing oversight is absolutely necessary. However, inasmuch as this issue is presently before the FCC, the Nebraska Commission, at this time, denies AT&T's Motion to Reopen the 271 proceeding.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that AT&T's Motion to Reopen the 271 Proceeding is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of June, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

Anne Boyle

Chair

COMMISSIONERS CONCURRING:

Frank E. Landis
Gerald L. Vap

//s//Anne C. Boyle
//s//Frank E. Landis
//s//Gerald L. Vap

ATTEST:

And S. Pollack

Executive Director