



Qwest
1020 19th Street NW, Suite 700
Washington, DC 20036
Phone 202.429.3120
Fax 202.293.0561

Melissa E. Newman
Vice President - Federal Regulatory

EX PARTE

August 26, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Application by Qwest Communications International, Inc. to Provide In-Region Interlata Service in the States of Colorado, Idaho, Iowa, Nebraska and North Dakota. WC Docket No. 02-148

Dear Ms. Dortch:

Pursuant to the staff's request, Qwest is filing the attached letters, which were sent to the Colorado, Idaho, Iowa, Nebraska, and North Dakota state commissions in March 2002, prior to Qwest filing its applications for 271 authority with the FCC. These letters informed the state commissions that Qwest, with the consent of the other parties to the agreements, submitted for the state commission's benefit copies of the agreements identified by the Minnesota Department of Commerce that involve competitive local exchange carriers operating in the particular state.

If you have any questions, I can be reached at 202-429-3120.

Sincerely,

A handwritten signature in black ink that reads "Melissa E. Newman". The signature is written in a cursive, flowing style.

Copy to:
Michael Carowitz
Cathy Carpino



MAR 12 2002

Paul R. McDaniel
Director Colorado Regulatory Affairs
1005 17th Street, Ste. 200
Denver, Colorado 80202
Tel. 303-896-4552
Fax 303-896-6095

March 11, 2002

Geri Santos-Rach
Chief of Fixed Utilities
Colorado Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, Colorado 80203

Re: Audit of Adjunct Agreements With CLECs

Dear Geri:

I am writing in response to your letter of February 25, 2002 initiating a staff audit request for documents relating to adjunct agreements with competitive local exchange providers in Colorado.

The staff's audit request presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgements it made in this area complied with a fair and proper reading of the Act. Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a PUC. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

The agreements generally fall into three general categories:

Geri Santos-Rach

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- ***Agreements that define business-to-business administrative procedures at a granular level.*** In some cases, the agreement provisions involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. In some cases, the parties managed to reach settlement after a PUC proceeding was filed but before hearing. In these cases, Commission approval of the dismissal was obtained. In other cases, the parties were able to reach settlement without troubling the Commission or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by a state commission.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** In some instances, the agreements reached have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, an agreement may relate to carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. Another example would be where Qwest is buying services that are not covered by Section 251 from the CLEC.

Qwest recognizes that this is an important issue for Colorado and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is correctly interpreted. First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them that the Telecommunications Act did not actually intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such an interpretation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if one state PUC decides that one or more of the contract provisions should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Geri Santos-Rach
March 11, 2002
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Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

As you know, the Minnesota Commission soon will be holding a hearing to address concerns raised by the State Department of Commerce (the "DOC") that certain provisions of agreements between Qwest and CLECs in that state should have been filed for approval by that state's Public Utility Commission. Qwest will defend its position vigorously. Meanwhile, however, we want you to be able to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252. I will also obtain a copy of the non-confidential complaint and forward that to you shortly.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Colorado. These agreements fall into two categories. One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment B). The second set of agreements is in effect today (Attachment C).¹ In addition and in response to your letter, Qwest is compiling additional responsive agreements and will provide those to you as we have discussed. Because those agreements implicate confidentiality obligations, Qwest must provide notice to, and confer with, the other contracting party before

¹ One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment C includes the one provision from the ATI agreement that is still in effect.

Geri Santos-Rach

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those agreements can be made available for your review. We are working diligently on this process.

I hope that this information is helpful. I want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me if you have any further inquiries about these matters. Thank you.

Sincerely,



Paul R. McDaniel

PRM/nms

Without Enclosures

cc: Mr. Bruce N. Smith (without enclosures)
Mr. Joe Molloy (with enclosures)

Jim Schmit
Idaho Vice President

999 Main Street, 11th Floor
Boise, Idaho 83702

jschmit@qwest.com
208 385 2628
208 385 8026 fax



March 12, 2002

Paul Kjellander, President
Marsha H. Smith, Commissioner
Dennis S. Hansen, Commissioner
Joe Cusick, Telecommunications Section Supervisor
Idaho Public Utilities Commission
472 W. Washington
PO Box 83720
Boise, ID 83720-0074

Re: Qwest Agreements with CLECs

Dear Commissioners and Mr. Cusick:

I would like to provide you with background information regarding a new proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations. It is important that you understand what this case is about — and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. The Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval. The DOC agrees, and is complaining about only certain selected provisions gleaned from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing last week, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that need not be filed. The DOC fell back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented here.

Qwest recognizes that at times its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act. In such cases these provisions should be filed with and approved by a PUC. However, at other times negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

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March 12, 2002

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

- **Agreements that define business-to-business administrative procedures at a granular level.** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- **Agreements to settle disputes.** Other provisions are included in agreements that settled ongoing disputes between Qwest and a CLEC. These matters typically relate to differences over past performance under an interconnection agreement, or billing disputes. Where Qwest has managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings, Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- **Agreements implementing Commission orders.** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
- **Agreements on matters outside the scope of Sections 251 and 252.** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has agreed to do so.

However, this is also an important issue for Idaho and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted. First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them for which the Telecommunications Act did not actually intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Page 3
March 12, 2002

Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations — subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest also has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

The Minnesota Commission soon will be holding a hearing to address the DOC's claims, and Qwest will defend its position vigorously. Meanwhile, however, we want you to be generally aware of the status of the matter and, if you choose, to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint to the copy of this letter going to Mr. Cusick (See Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252. If you would prefer that we provide a copy of this pleading directly to you, please feel free to contact me.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Idaho with the copy of this letter going to Mr. Cusick. Qwest will be happy to provide additional copies for the Commission's convenience at your request. These agreements fall into two categories. One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment B). The second set of agreements is in effect today, and Qwest is submitting them as "conditional" interconnection agreements (Attachment C).¹ Should the Commission determine that they fall within the scope of Section 252 — and Qwest submits they do not — then those agreements may be approved as interconnection agreements in Idaho.

I hope that this information is helpful to the Commission. I want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me if you have any questions.

Sincerely,



¹ One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment C includes the one provision from the ATI agreement that is still in effect.



825 High Street, 9 South of 9
Des Moines, IA 50308
Phone 515-286-7338
Fax 515-286-8128

Ione E. Wilkens
General Manager - Policy & Law

March 11, 2002
Docket No. FCU-02-2

Ms. Judi Cooper, Executive Secretary
Utilities Board-Iowa Department Of Commerce
350 Maple Street
Des Moines, Iowa 50319-0069

FILED WITH
Executive Secretary

MAR 11 2002

IOWA UTILITIES BOARD

Re: Qwest Agreements With CLECs

Dear Ms. Cooper:

Qwest Corporation ("Qwest") would like to provide the Iowa Utilities Board ("Board") with background information regarding a proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission.¹ Qwest vigorously disputes the DOC's allegations, and it is important to understand what this case is about -- and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval. The DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However, it is telling that the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing last week, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that do not. The DOC fell back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented here.

¹ This is the proceeding described by AT&T in its letter to the Board dated February 27, 2001. (Presumably AT&T meant to type 2002).

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a PUC. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

- ***Agreements that define business-to-business administrative procedures at a granular level.*** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. The parties managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- ***Agreements implementing Commission orders.*** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has now agreed to do so.

However, this is also an important issue for Iowa and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted. First, an overly broad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them that the Telecommunications Act did not actually

intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overly broad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Third, an overly broad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overly broad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest also has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

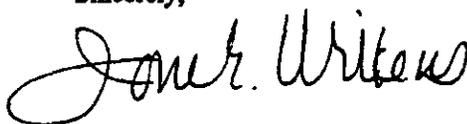
The Minnesota Commission soon will be holding a hearing to address the DOC's claims, and Qwest will defend its position vigorously. Meanwhile, however, we want the Board to be able to see for itself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Board's benefit copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Iowa (Attachment B). Please note that these documents are not considered confidential or trade secrets even though such stamps

appear on the documents. Qwest is hopeful that this information is helpful to the Board. Qwest reiterates its strong belief that it made correct legal determinations on whether these agreements had to be filed for Board approval. Qwest certainly acted in good faith in making these decisions, and stands by its actions. This letter should not be considered to be Qwest's formal responsive filing in Docket No. FCU-02-2. Qwest will formally respond within the 20-day timeframe set by Board rules.

Please contact me if you have any further inquiries about these matters. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Janet Witek". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

CERTIFICATE OF SERVICE

Docket No. FCU-02-2

I hereby certify that I have this day served the foregoing document on the following persons and parties as required by the rules of the Iowa Utilities Board.

Allen Kniep
General Counsel
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319-0069

John R. Perkins, Acting Consumer Advocate
Office of Consumer Advocate
310 Maple Street
Des Moines, IA 50319-0063

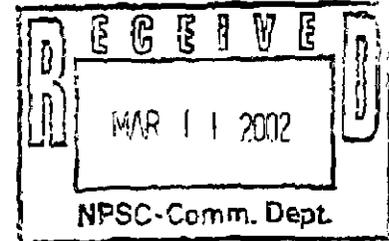
Gary B. Witt, Senior Attorney
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, CO 80202

Dated this 11th day of March 2002.



The signature is written in cursive and is underlined.

Copy to Gene Hand



March 11, 2002

Commission Chair Anne Boyle
Nebraska Public Service Commission
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509-4927

Re: Qwest Agreements With CLECs

Dear Commissioner Boyle:

I would like to provide you with background information regarding a new proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations, and it is important to understand what this case is about -- and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval. The DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However, it is telling that the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing this week, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that do not. The DOC fell back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented here.

Privileged and Confidential -- Attorney Work Product -- Attorney-Client Communication

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a PUC. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

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- **Agreements to settle disputes.** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. The parties managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- **Agreements implementing Commission orders.** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
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Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has now agreed to do so.

However, this is also an important issue for Nebraska and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted. First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many

agreements between them that the Telecommunications Act did not actually intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

Qwest also has taken strong exception to the DOC's allegations that it has discriminated against other CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process. Similarly, Qwest does not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation.

The Minnesota Commission soon will be holding a hearing to address the DOC's claims, and Qwest will defend its position vigorously. Meanwhile, however, we want you to be able to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the agreements identified by the Minnesota DOC that involve CLECs operating in Nebraska. These agreements fall into two categories.

One set of contracts is no longer in effect; they are only matters of historical interest at this point (Attachment B). The second set of agreements is in effect today, and Qwest is submitting them as "conditional" interconnection agreements (Attachment C).¹ Should the Commission determine that they fall within the scope of Section 252 -- and Qwest submits they do not -- then those agreements may be approved as interconnection agreements in Nebraska.

I hope that this information is helpful to the Commission. I want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me if you have any further inquiries about these matters. Thank you.

Sincerely,



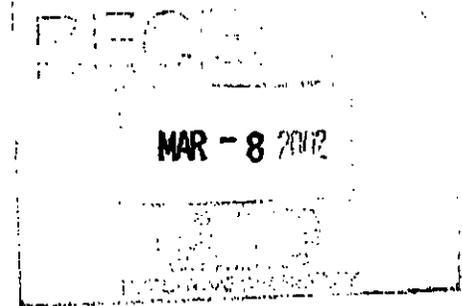
Tim Sandos
Vice President-Nebraska

cc: Gene Hand
Andy Pollock
Chris Post

¹ One provision of the ATI agreement, which is marked as Exhibit 1, is still in effect. Thus, Attachment C includes the one provision from the ATI agreement that is still in effect.



March 8, 2002



Jon Mielke
Executive Secretary
ND Public Service Commission
State Capitol - 12th Floor
Bismarck, ND 58505-0480

Re: Qwest Agreements With CLECs

Dear Mr. Mielke:

I would like to provide you with background information regarding a new proceeding in Minnesota in which the State Department of Commerce ("DOC") is arguing that certain provisions of 11 agreements between Qwest and CLECs should have been filed for the prior approval of the Minnesota Public Utility Commission. Qwest vigorously disputes the DOC's allegations, and it is important to understand what this case is about -- and what it is not.

The DOC's complaint presents an important legal question: where is the line drawn between (i) key terms and conditions of interconnection that must be filed for prior PUC approval under Section 252 of the federal Telecommunications Act of 1996, and (ii) other ILEC-CLEC contract provisions that do not fall within this mandatory filing requirement? ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet the Telecommunications Act does not require literally every provision of every ILEC-CLEC contract to be filed for PUC approval. The DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

Qwest has exercised good faith in deciding when a particular contract arrangement with a CLEC requires PUC filing and prior approval, and when it does not. Qwest believes that the judgments it made in this area complied with a fair and proper reading of the Act. Now Qwest's judgments will be second-guessed in the Minnesota complaint proceeding. However, it is telling that the DOC itself, when questioned by one of the Minnesota Commissioners at a hearing this week, was unable to set forth a clear and cogent explanation of where the line falls between contract provisions that must be filed under Section 252, and those that do not. The DOC fell back on vague suggestions that "you know it when you see it." Yet the ambiguity of the Section 252 "mandatory filing" line is the very issue presented her

Qwest recognizes that sometimes its negotiations with CLECs will result in new interconnection terms and conditions implicating Section 251 of the Act, in which case they should be filed with and approved by a PUC. However, other times the negotiations may resolve past disputes, or result in contract arrangements that do not create PUC filing obligations.

The provisions at issue in Minnesota fall into four general categories -- none of which require filing under Section 252:

- ***Agreements that define business-to-business administrative procedures at a granular level.*** Many of the provisions cited by the DOC involve business processes that go well beyond the level of detail that Section 252 of the Act requires to be filed in an interconnection agreement. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest has agreed to meetings and similar administrative processes to review business questions and concerns. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its CLEC customers.
- ***Agreements to settle disputes.*** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. The parties managed to reach settlement without troubling the various state commissions or otherwise proceeding through formal hearings. Section 252 does not require that such settlements be filed as interconnection agreements and approved by the state commission.
- ***Agreements implementing Commission orders.*** In at least one provision, the DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings.
- ***Agreements on matters outside the scope of Sections 251 and 252.*** Some of the DOC's complaints go to agreements that have nothing to do with Section 251, and therefore do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

Matters in Minnesota are moving on a fast track. Qwest has as much of an interest as any party in getting further clarity regarding which contract provisions with CLECs must be filed and approved, and which do not. Qwest and the DOC asked the Minnesota PUC to resolve this issue on an expedited basis, and the Commission has now agreed to do so.

However, this is also an important issue for North Dakota and all other states. Section 252 is a national standard, and all states have an interest in seeing that it is not misinterpreted.

First, an overbroad reading of Section 252 means that ILECs and CLECs would have to file many agreements between them that the Telecommunications Act did not actually intend to require PUC approval. This would unnecessarily burden all PUCs with added time-consuming review proceedings, and delay the point when such agreements could take effect. Such micro-regulation is the antithesis of the Telecommunications Act's intent.

Second, an overbroad application of Section 252 would implicate the validity of ILEC-CLEC agreements covering operations in multiple states. By law, if a contract provision truly qualifies as a "term of interconnection" under Section 251 of the Act, it only is valid after it has been submitted to and approved by a state PUC. Thus, if the Minnesota PUC decides that one or more of the contract provisions cited by the DOC should have been filed and approved under Section 252, then the relevant provisions were never actually valid. Yet this would raise questions as to the legal status of those same terms in other states.

Third, an overbroad interpretation of Section 252 would be contrary to the Telecommunications Act's goal of encouraging ILECs and CLECs to work out their arrangements through private negotiations -- subject only to the specific minimum pre-approval requirements for those contract provisions that are truly within the scope of Sections 251 and 252. Qwest takes its obligations under the Act very seriously. We are always willing to enter into good faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential, and Qwest respects the proprietary information of its customers. The Telecommunications Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would interfere with the incentives and ability of parties to reach agreement in areas outside the actual scope of the Act.

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The Minnesota Commission soon will be holding a hearing to address the DOC's claims, and Qwest will defend its position vigorously. Meanwhile, however, we want you to be able to see for yourself what the Minnesota case is all about. To that end, we have attached a copy of our Answer to the DOC complaint (Attachment A). This Answer explains why, for one or more reasons, each of the contractual arrangements cited by the DOC falls outside the minimum filing requirements of Section 252.

Furthermore, Qwest has nothing to hide regarding the agreements cited by the DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the agreements identified by the Minnesota

DOC that involve CLECs operating in North Dakota. Qwest is submitting them as "conditional" interconnection agreements (Attachment B). Should the Commission determine that they fall within the scope of Section 252 -- and Qwest submits they do not -- then those agreements may be approved as interconnection agreements in North Dakota.

I hope that this information is helpful to the Commission. I want to reemphasize that Qwest strongly believes that it made correct legal determinations on whether these agreements had to be filed for Commission approval. We certainly acted in good faith in making these decisions, and we stand by our actions.

Please contact me if you have any further inquiries about these matters. Thank you.

Sincerely,



Mel Kambeitz
State Regulatory Director