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Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications of Qwest Communications International Inc. for Authorization Under Section 271 of the Communications Act WC Docket No. 02-148 and 02-189

Dear Ms. Dortch:

On September 3, 2002, representatives of Qwest Communications International Inc. ("Qwest") had a telephone conversation with Commission staff regarding matters raised in supplemental comments and reply comments filed in the above-referenced proceeding in response to the Commission's Public Notice of August 21, 2002, DA-02-2065. Qwest provided supplemental information in a follow-up telephone conversation on September 4. Participating on behalf of the Commission were William Dever and Cathy Carpino of the Wireline Competition Bureau. Participants on behalf of Qwest were Todd Lundy, Melissa Newman, and Dan Poole of the company, and, on Wednesday's call, Peter Rohrbach of Hogan & Hartson.

Qwest provided information consistent with its previous filings in these dockets. Those filings demonstrate that the so-called "unfiled agreements" issue does not present a reason for delaying grant of this application. First, the record here shows that Qwest has filed hundreds of interconnection agreements, and that disputes have arisen only regarding a relative handful of contracts with CLECs. These contracts present *legal* questions as to where the line is drawn between those ILEC-CLEC business arrangements that must be filed under Section 252 of the Act for prior utility commission approval, and those that do not. Issues have been raised regarding settlement agreements, contract terms defining business-to-business procedures, and various other matters that Qwest believes are not subject to a filing requirement. The contracts also present questions of *fact*. For example, adversaries of these 271 Applications have misread the terms of particular contracts to fit their preferred interpretation of Section 252, misreadings that Qwest has rebutted with testimony in relevant state proceedings. And at least as important, facts are relevant to evaluate the impact of a filing lapse, if any, on other CLECs. For example, Qwest has shown that many of the contract provisions for which it is criticized simply state its business practices applicable to all CLECs, are consistent with provisions in other filed interconnection agreements, only were in place for short periods before being terminated, or the like. In short, the record here provides no basis for finding broad scale non-compliance or

discrimination. The record rather shows substantial evidence that Qwest has opened its local markets and they are open today. To the extent compliance allegations have been raised in particular cases, they appropriate outcome is to address them on the facts in separate proceedings.

In any event, Qwest has also shown that it has responded responsibly when this matter arose. Qwest has informed state commissions in its region of this issue and answered all questions. Qwest has filed a petition requesting this Commission to define the scope of Section 252(a)'s filing requirement. Pending clarification of that legal question, Qwest has been filing all new contracts with CLECs creating obligations that relate to Section 251(b) and (c) in any way, without reference to its position that some administrative matters arising from the ILEC-CLEC business-to-business relationship need not obtain prior regulatory approval.

Qwest also has taken recent actions with respect to its older contracts. These actions are outlined in Qwest's ex parte letter of August 16, 2002. Specifically, pending action on it declaratory ruling petition, Qwest has filed each contract that contains any currently effective going forward obligation with respect to Section 251(b) or (c) in the nine states covered by these two applications, and invited CLECs to opt into such contract terms. Thus, whatever the scope of Section 252 as ultimately defined, there can be no argument that today Qwest is giving one CLEC something that another CLEC may not have related to Section 251.

During the telephone calls referenced here Qwest provided the Commission with an update on the status of these actions taken pursuant to its August 16 ex parte letter. Qwest noted that on August 21 and 22 it filed under Section 252(e) all contracts with CLECs that contained currently effective going forward obligations with respect to Section 251(b) and (c) in the applicable states where it had pending Section 271 applications, except in the state of Iowa, where Qwest on July 29, 2002, already had made filings in compliance with previous orders of the Iowa Utilities Board on this subject. Each of the contracts filed with and approved by the Iowa Board under Section 252(a) are public documents. Approximately half of the agreements filed on August 21 and 22 contained confidentiality provisions, and in those cases Qwest asked the state commissions to maintain the agreements under seal for seven days, after which Qwest asked that the agreements be made public. On or about the August 21 and 22 filing dates Qwest notified the CLEC-parties to the agreements of the filings by both overnight mail and telephone to inform them of their opportunity to file objections, within the seven day period, to the agreements becoming public. In addition to communicating with the CLECs, Qwest has checked for filings at the relevant state commissions. As of today, Qwest is aware of only one party that may be objecting to public review of the contracts in the Commission filing process.

Consistently with its August 16 ex parte letter, Qwest also has posted the filed contracts on its web site. Qwest posted those contracts that already were public and/or carried no confidentiality provision on or about August 22. With the one exception where the CLEC is objecting, as of yesterday Qwest finished posting all remaining contracts on its web site..

In its August 16 ex parte letter Qwest explained that certain contracts do not involve Section 251 obligations beyond those already on file and would not be filed with the states. Thus, Qwest has not filed under Section 252(e) day to day paperwork, such as orders for specific UNEs and interconnection services under interconnection agreements. Similarly, Qwest has not filed

orders for specific services such as E911 and Line Information Database Service, where the terms and conditions of such services are included in a filed interconnection agreement, and the CLEC is completing a form contract to memorialize the order of the service on those terms. Qwest also has not filed contracts with CLECs arising out of bankruptcy proceedings such as contracts that relate to pre- and post-petition claims, adequate assurances agreements, avoidance of service interruptions and the like, insofar as such contracts do not change the terms or conditions of the underlying interconnection agreement. In the event that a bankruptcy court finalizes an agreement that does change the terms of the existing interconnection agreement, that agreement will be filed with the state commissions under Section 252(e). 1/ (We have not excluded agreements with bankrupt CLECs entered into before they filed for bankruptcy.)

Qwest also discussed the Implementation Plan dated July 31, 2001 with Eschelon that contains detail of the interactions and processes between the two companies. It is one of the agreements contained in the complaint brought by the Minnesota Department of Commerce ("MDOC") against Qwest before the Minnesota Public Utilities Commission, and it is one of the agreements referenced in the MDOC's Comments to the Commission dated August 28, 2002. Qwest and Eschelon terminated the July 31, 2002 Implementation Plan, and seven other agreements, through a Settlement Agreement dated March 1, 2002. The March 1 agreement also refers to a payment by Qwest to Eschelon, but that payment resolved other matters, including billing disputes, as stated in the agreement. The payment is not tied to the termination of the Implementation Plan.

Further, Qwest provided information concerning the Confidential/Trade Secret Stipulation between ATI and U S WEST dated February 28, 2000. This agreement was not filed as an interconnection amendment in any state under Section 252(e) on August 21 or 22 because the provisions relating, even in a broad way, to Section 251 have been superseded or terminated by other agreements, filed interconnection amendments, and commission orders. In particular, the reciprocal compensation provisions contained in paragraph 7 of this agreement have been superseded by an interconnection amendment providing for bill and keep, which previously had been executed and filed with state commissions under Section 252(e).

Qwest also discussed AT&T's allegation that SBC Telecom ("SBCT") had a right to opt into settlement agreements of other parties in Qwest states. AT&T is misinterpreting the facts. In an agreement with SBCT settling issues raised by SBCT in connection with the U S WEST – Qwest merger, U S WEST agreed that:

> In those states where U S WEST has entered into a settlement agreement with a party to the U S WEST/Qwest merger docket which results in an amendment to the interconnection agreement between U S WEST and that party, U S WEST shall make that amendment available to SBCT in the state(s) where the amendment is filed. Upon execution of any amendment to an interconnection agreement with a party to the state merger proceeding which results from a

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1/ Qwest has an agreement with Arch Wireless in this category that was executed by the parties on July 26, 2002, but it has not yet been approved by the bankruptcy court. When approved by the court, this amendment to the Arch interconnection agreement will be filed under Section252(e).

> settlement agreement with such party on the U S WEST/QWEST merger docket in a state proceeding, U S WEST will provide such amendment to SBCT within 7 business days after it has been filed for state commission approval. U S WEST will then expeditiously make available an identical amendment to SBCT, if SBCT desires.

AT&T says that Qwest agrees to "give" SBC any contract language that is given to any other CLEC as a result of settlement agreements in any Qwest state. This is misleading. The language simply says that SBC can opt into an interconnection agreement resulting from a merger-related settlement in the state where the agreement applies, which of course every CLEC can do. It is correct that Qwest is obliged to give SBCT notice in addition to the notice that all CLECs get of interconnection agreement filings in the ordinary course (but only in this very limited category related to a U S WEST- Qwest merger settlement). Qwest does not view such a narrow customer notice commitment as the kind of action that requires filing with a utility commission and prior state approval under Section 252(a). But in any event, the agreement presents no discrimination against other CLECs because they all have the same rights and effective notice of interconnection filings. Nevertheless, because the provision has not formally terminated, Qwest filed the SBCT contract as part of its August 21 and 22 filings in states where SBC has an interconnection agreement with Qwest.

If anything, filing of the SBCT contract exemplifies two facts. First, Qwest is taking very broad actions to file any contract that potentially might qualify as having going forward terms "related" to Section 251(b) and (c), notwithstanding its view that many such contracts are not the type that require state utility commission approval under Section 252. AT&T is wrong when it implies that Qwest is underfiling.

Second, this contract demonstrates why AT&T is being disingenuous when it tries to paint a picture of broad scale non-compliance by Qwest. Facts matter. It is important to look at the actual terms of a contract to evaluate whether filing is appropriate. And it is equally important to look at the surrounding circumstances to evaluate whether discrimination has occurred, even assuming that filing should have occurred in the past. That is why such fact questions belong in an enforcement or compliance proceeding, and not in a Section 271 application docket, as Qwest has repeatedly demonstrated here.

Finally, Qwest discussed its March 19, 2001 agreement with Eschelon. This agreement says in paragraph 1 that, in consideration of a payment from Qwest to Eschelon, Eschelon agreed to pay amounts due for the period prior to March 1, 2001, and, in contrast to AT&T's characterization, *Eschelon agrees to release Qwest from, among other things, any claims that Eschelon may have against Qwest for true-ups that Qwest may owe Eschelon* resulting from Minnesota Commission orders addressing resale, collocation and unbundled network elements, and for platform billing prior to March 1, 2001. Further, this agreement does not contain any currently effective terms or conditions and therefore was not one of the agreements filed with state commissions on August 21 and 22. Finally, the Minnesota DOC did not allege in its complaint that Qwest should have filed any of the provisions of this March 19 agreement with Eschelon as amendments to the interconnection agreement with the Minnesota Commission under Section 252.

Pursuant to the Public Notices in these proceedings (DA 02-1390 and DA 02-1666), the 20 page limitation does not apply to this ex parte letter. If any questions arise in connection with this matter, please contact the undersigned.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By _____
Peter A. Rohrbach

Its Counsel

cc: Michelle Carey
Michael Carowitz
William Dever
Cathy Carpino
John Stanley