

02-314

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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September 30, 2002

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SEP 30 2002

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Qwest Communications International Inc.  
Consolidated Application for Authority to Provide  
In-Region, InterLATA Services in Colorado, Idaho, Iowa,  
Montana, Nebraska, North Dakota, Utah, Washington and  
Wyoming**

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Dear Ms. Dortch:

Pursuant to Section 271 of the Telecommunications Act of 1996 and the Commission's Public Notice, "Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act," DA 01-734 (March 23, 2001) (re-released April 27, 2001), Qwest Communications International Inc., on behalf of itself and its subsidiaries, Qwest Corporation, Qwest Communications Corporation and Qwest Long Distance Corporation (collectively, "Qwest"), submits herewith its Consolidated Application for Authority to Provide In Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming (the "Application").

This filing supplements and incorporates in their entirety Qwest's previous applications (and associated record submissions) to provide long distance service in the nine captioned states. See WC Docket Nos. 02-148 (Colorado, Idaho, Iowa, Nebraska and North Dakota) and 02-189 (Montana, Utah, Washington and Wyoming). As explained in Qwest's Supplemental Brief in support of this Application, in view of the extensive record amassed in connection with the original

Ms. Marlene H. Dortch  
September 30, 2002  
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applications and the limited nature of the new facts presented in this refiled Application, Qwest respectfully requests that the Commission establish an expedited schedule for this proceeding.

This Application contains confidential information, and Qwest is filing the Application today in both confidential and redacted versions. Qwest's submission contains the following items:

- An original and four paper copies of the Supplemental Brief in support of the Application; an Addendum to the Supplemental Brief; and Attachments 1 through 6. Attachment 5 consists of Appendices A (declarations in support of the Supplemental Brief) and D (August 2002 Commercial Performance Results).
- One CD-ROM set in read-only format containing the Supplemental Brief in support of the Application; the Addendum to the Supplemental Brief; and Attachments 1 through 6.
- One paper copy of each document containing confidential material, together with a letter identifying the confidential documents being submitted.

Concurrently herewith, Qwest is submitting under separate cover the following items to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW, 5-C 201, Washington, D.C. 20054:

- 20 copies of the entire Application in paper form.
- 12 CD-ROM sets in read-only format containing the entire Application.
- Five paper copies of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents being submitted.
- Ten CD-ROM sets in read-only format containing each document containing confidential material, together with

Ms. Marlene H. Dortch  
September 30, 2002  
Page 3

a copy of the letter, described above, identifying the confidential documents being submitted.

Also concurrently herewith, Qwest is submitting under separate cover the following items to Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, Department of Justice, 1401 H. Street NW, Suite 8000, Washington, D.C. 20530:

- Eight copies of the entire Application in paper form.
- Eight CD-ROM sets in read-only format containing the entire Application.
- Eight paper copies of each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents submitted with the Application.
- Eight CD-ROM sets in read-only format containing each document containing confidential material, together with a copy of the letter, described above, identifying the confidential documents submitted with the Application.

Qwest also is providing copies of its Application in paper and CD-ROM form to the pertinent state regulatory authorities and the FCC's copy contractor, Qualex International. As explained further in the Supplemental Brief in support of the Application, Qwest will make the Application available on its website, appropriately redacted to exclude confidential documents.

Inquiries regarding access to the confidential materials included in the Application should be directed to the following:

C. Jeffrey Tibbels  
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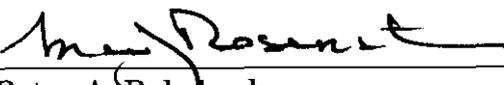
Ms. Marlene H. Dortch  
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Finally, also enclosed is an extra copy of this letter and selected portions of the Application to be stamped as received and returned via our messenger.

Questions concerning this submission should be directed to the undersigned.

Respectfully submitted,

**Hogan & Hartson L.L.P.**

By:   
Peter A. Rehrbach  
Mace J. Rosenstein  
Yaron Dori

Counsel for Qwest Communications  
International Inc.

Enclosures

cc: Janice Myles  
Nancy Goodman, Esq.  
Colorado Public Utilities Commission  
Idaho Public Utilities Commission  
Iowa Utilities Board  
Montana Public Service Commission  
Nebraska Public Service Commission  
North Dakota Public Service Commission  
Public Service Commission of Utah  
Washington Utilities and Transportation Commission  
Wyoming Public Service Commission  
Qualex International

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

In the Matter of )  
 )  
**Qwest Communications** )  
**International Inc.** )  
 )  
Consolidated Application for Authority )  
to Provide In-Region, InterLATA Services in )  
Colorado, Idaho, Iowa, Montana, Nebraska, )  
North Dakota, Utah, Washington and Wyoming )

WC Docket No. 02-314

To: The Commission

**SUPPLEMENTAL BRIEF OF  
QWEST COMMUNICATIONS INTERNATIONAL INC.  
IN SUPPORT OF CONSOLIDATED APPLICATION  
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN  
COLORADO, IDAHO, IOWA, MONTANA, NEBRASKA, NORTH DAKOTA,  
UTAH, WASHINGTON AND WYOMING**

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September 30, 2002

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

In the Matter of )  
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To: The Commission

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COLORADO, IDAHO, IOWA, MONTANA, NEBRASKA, NORTH DAKOTA,  
UTAH, WASHINGTON AND WYOMING**

**I. INTRODUCTION AND SUMMARY**

**A. Qwest Has Presented a Comprehensive Showing That Its Local Exchange Markets Are Open To Competition**

On June 12, 2002, Qwest filed a consolidated application to provide in-region, interLATA services in the states of Colorado, Idaho, Iowa, Nebraska and North Dakota. *See* WC Docket No. 02-148 (“Qwest I”). On July 13, 2002, Qwest filed a consolidated application to provide in-region, interLATA services in the states of Montana, Utah, Washington and Wyoming. *See* WC Docket No. 02-189 (“Qwest II”). <sup>1/</sup> These two applications built on years of

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<sup>1/</sup> Unless otherwise noted, defined terms used herein have the meanings assigned in the Qwest I and Qwest II applications, which sometimes are collectively referred to herein as Qwest’s “original applications.” Qwest’s *ex parte* statements in WC Docket Nos. 02-148 and

work by Qwest, the State Authorities, CLECs, and other parties to develop, implement, and review the actions needed to open local markets in the nine application states. This activity included collaboration through the ROC on the most detailed set of performance measures in the country, and the most exhaustive third party OSS test ever undergone by a BOC.

Each of the nine State Authorities completed its own comprehensive review process and, as reflected in its consultative report submitted to this Commission, agreed that Qwest meets the criteria of Section 271. Indeed, the record is compelling on all fronts:

- Qwest has met the requirements of “Track A” in each of the nine application states. Local exchange competition is active in each of them, and Qwest already has lost significant market share.
- Qwest has satisfied each of the 14 competitive checklist items for each state, as demonstrated by its “real world” commercial performance.
- Qwest has implemented nondiscriminatory OSS and is meeting collaboratively developed performance measures across the board. Qwest’s strong performance has been confirmed by the results of the comprehensive ROC test, and that strong performance continues today.
- Qwest’s rates for unbundled network elements and other interconnection offerings fully satisfy the Commission’s established pricing standards.
- Qwest is subject to comprehensive and self-executing performance assurance plans in each of the application states. Together these plans subject Qwest to aggregate penalties in the hundreds of millions of dollars annually if, in the future, the company fails to satisfy key performance measures.

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02-189 are referenced herein by “date/identifier” in accordance with the Chronological Index (and accompanying Subject Matter Index) of *Ex Parte* Submissions and Errata Filed in WC Docket Nos. 02-148 and 02-189, provided at Attachment 6 hereto.

Qwest will shortly file applications with the FCC for authorization under 47 U.S.C. § 214 to provide international services originating in each of the nine captioned states.

- Last, but not least, Qwest has shown that its entry into the interLATA business in each of the application states will promote the public interest by increasing competition, resulting in lower prices, expanded consumer choice, and better service.

In short, the record already amassed in the original application dockets demonstrates that significant local exchange competition exists in each of the nine application states, that Qwest satisfies the competitive checklist, and that grant of Qwest's request for interLATA authority would serve the public interest.

**B. Qwest is Refiling and Supplementing its Original Applications to Resolve All Remaining Matters**

Near the end of the statutory review period in WC Docket No. 02-148, the Staff raised questions regarding the compliance of QCC, the previously designated Section 272 affiliate, with Section 272(b)(2) in light of the pending restatement of QCII's financial statements for prior periods based in part on QCC transactions. Qwest demonstrated that the relevant matters were not affiliate transactions between QCC and QC, the underlying subject of Section 272. Qwest also demonstrated that it was fully committed to maintaining the books, records and accounts of QCC in accordance with Generally Accepted Accounting Principles ("GAAP"), and was doing so today subject to recognizing the impact of the forthcoming restatement. QCC also satisfied the requirements of Section 272 in all other respects. Qwest argued that in these circumstances the FCC could, as a legal matter, find that the company met

the statutory requirements of Section 272(b)(2). <sup>2/</sup> Several State Authorities filed comments in agreement. <sup>3/</sup>

However, when Qwest concluded that it would not be able to resolve the Staff's questions on this point within the 90-day timeframe for the Qwest I application, and because those questions also pertained to the Qwest II application, Qwest withdrew both applications on September 10, 2002. Qwest stated at that time that it intended to file a new application soon resolving the Staff's questions and incorporating all of the states for which interLATA authority had been requested in its original applications. This re-filed Consolidated Application represents the culmination of that effort.

Consistent with prior Section 271 cases, this application adopts and incorporates by reference the original Qwest I and Qwest II applications and all of Qwest's submissions to the record in each of WC Docket Nos. 02-148 and 02-189 in support of those applications. <sup>4/</sup> In addition, this Supplemental Brief provides information regarding Qwest LD Corp. ("QLDC"), a newly formed indirect wholly-owned QCII subsidiary, which will provide interLATA services

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<sup>2/</sup> See Qwest *ex parte* statements 08/29/02c, 09/04/02d and 09/09/02f.

<sup>3/</sup> See, e.g., Comments of the Nebraska Public Service Commission (Sept. 3, 2002); Comments of the Iowa Utilities Board (Sept. 4, 2002); Letter of Bob Rowe, Commissioner, Montana Public Service Commission (Sept. 4, 2002).

<sup>4/</sup> See, e.g., *Georgia/Louisiana 271 Order* ¶ 7; *New Jersey 271 Order* ¶ 7. To the extent a formal motion is required, Qwest hereby respectfully requests that the Commission incorporate the company's prior filings in WC Docket Nos. 02-148 and 02-189 (including its briefs, declarations, exhibits and *ex parte* statements) into the new docket to be opened with respect to the instant Consolidated Application. Attachment 6 hereto contains chronological and thematic indices of Qwest's *ex parte* submissions and other filings in each of the Qwest I and Qwest II dockets. This Supplemental Brief and its supporting declarations, together with the briefs, supporting declarations, and certain other materials accompanying the original Qwest I and Qwest II applications, as well as Qwest's substantive *ex parte* submissions in both proceedings, are available on Qwest's web site at [www.qwest.com/about/policy/ldReentry](http://www.qwest.com/about/policy/ldReentry).

upon grant of this Application. QLDC is a fully compliant Section 272 affiliate, as demonstrated in Section II below and the accompanying declarations. Creation of QLDC moots the concerns regarding QCC accounts that were at issue previously.

In addition, Qwest supplements the record to include more recent data relevant to this Application. Qwest's re-filed Application confirms what the extensive record developed in Qwest I and Qwest II so clearly demonstrates: that Qwest satisfies all elements of the competitive checklist; that CLECs are entering and competing in local markets in the application states *via* all three entry paths delineated by the Act; and that Qwest's excellent commercial performance continues to validate the outstanding results recorded during the most comprehensive and rigorous third-party test of a BOC's OSS yet undertaken.

Thus, for example, competitive carriers continue to maintain market shares comparable to those documented in Qwest's original applications. *See Supplemental Declaration of David L. Teitzel*, Att.5, App. A, at 19-23. In fact, certain key CLEC volumes, such as the number of stand-alone UNE loops in service, have increased in every one of the nine states in the months since Qwest's original applications were filed. *See id.* at 7-8.

Meanwhile, Qwest's performance in providing interconnection, UNEs and other services to CLECs has been excellent, as reported in the Qwest I and Qwest II applications, and Qwest's performance has continued to be very strong. The original Qwest I application included performance data for the four-month period January through April 2002, and the Qwest II application included performance data for the period February through May 2002. In addition, Qwest updated the record in both proceedings to provide data through July 2002. Qwest submits

herewith performance data for August 2002, 5/ so the record before the Commission now includes eight months of commercial performance results. Qwest's excellent performance throughout this period demonstrates the openness of its markets, as well as its significant efforts to provide service to CLECs to enable them to compete in the application states and throughout Qwest's region.

Finally, Qwest is submitting, as an Addendum to this Supplemental Brief, information updating the record in WC Docket Nos. 02-148 and 02-189 in response to certain FCC Staff questions and assertions by third parties contained in *ex parte* submissions in the latter few days of those proceedings. 6/

For example, late in the process certain CLECs raised further allegations regarding manual processing, service order commitments for line sharing, billing, timeliness of jeopardy notices or other OSS matters. In the Addendum Qwest demonstrates that these complaints are without merit. The simple fact, confirmed by eight months of performance data, is that Qwest's OSS is performing well and provides CLECs with a meaningful opportunity to compete. Qwest's performance will continue to be tested post-entry, and Qwest will be subject to significant financial penalties in the event of material lapses. Qwest also is fully committed to ongoing dialog with CLECs through the change management process so that its OSS can continue to evolve. Undoubtedly CLECs always will ask for more and more; that is the nature of

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5/ See Attachment 5, Appendix D.

6/ As indicated in the Addendum, information provided therein supplements certain information contained in the declarations filed in support of Qwest's original applications, which, as noted above, are incorporated by reference in this refiled Consolidated Application.

the negotiation process. For present purposes, however, the record demonstrates that Qwest is giving CLECs what is required to satisfy all the criteria of Section 271 today.

Qwest also provides an update on the status of filings of CLEC contracts it made in August 2002 with various State Authorities. As the FCC is aware, on August 21 and 22, 2002, Qwest filed with commissions in eight of the nine application states copies of its previously unfiled contracts with CLECs that contain currently-effective provisions related to Section 251(b) or (c) matters. <sup>7/</sup> These filings were made pursuant to Section 252(e), and State Authorities have until November 19 or 20 to approve or reject the contracts as interconnection agreements. If the State Authorities do not act by that date, the contracts will take effect by operation of law. In advance of that date, Qwest also has posted the contracts on its web site and invited other interested CLECs to request such currently effective provisions now pursuant to applicable "opt-in" policies under Section 252(i).

By virtue of these filings, there can be no debate that Qwest is making available to all CLECs in a state any Section 251-related contract right that it is making available to one. The Commission is aware of ongoing disputes regarding the facts and circumstance of Qwest-CLEC agreements that are no longer in effect, as well as, for that matter, the appropriate legal line between those ILEC-CLEC contract terms that require prior state commission approval and those that do not. Qwest will not repeat the extensive discussion already in the record on this

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<sup>7/</sup> No new filing was made in the ninth state, Iowa, because Qwest previously had made such filings in another IUB proceeding. Those filings were approved on August 27 and the Iowa proceeding is closed.

subject. 8/ For present purposes, the relevant point is that Qwest today is in compliance with Section 252 under any reading of the Act, and hence this matter presents no Section 271 issue.

Qwest recognizes that some parties will argue that the Commission should delay the future public benefits of long distance competition - notwithstanding all the steps Qwest has taken to open its markets - based on alleged compliance failures in the past. Qwest does not admit to any such lapses. But, in any event, the Commission has repeatedly confirmed that a Section 271 proceeding is not the place to consider disputes that are pending (or more properly belong) in separate complaint or enforcement dockets. 9/ The Commission also has determined that a Section 271 proceeding is not the place to consider “unresolved interpretive disputes about the precise content of an incumbent LEC’s obligations to its competitors.” 10/ And the Commission has made clear that incidents of past misconduct that have been resolved going forward do not call into question whether the market now “is, or will remain, open to competition.” *Michigan 271 Order* ¶ 397.

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8/ See, e.g., Qwest *ex parte* statement 08/27/02e; Qwest Supplemental Reply Comments in WC Docket No. 02-148 (Aug. 30, 2002).

9/ See, e.g., *Georgia/Louisiana 271 Order* ¶ 305, *Pennsylvania 271 Order* ¶¶ 108, 118; *Massachusetts 271 Order* ¶ 203; *Kansas/Oklahoma 271 Order* ¶ 230, *Texas 271 Order* ¶ 383.

10/ *Kansas/Oklahoma 271 Order* ¶ 19 (footnotes omitted). See also *Texas 271 Order* ¶ 23-27. The Commission reiterated this policy in the *BellSouth Georgia/Louisiana 271 Order*. In that proceeding, two CLECs claimed that a BellSouth interconnection policy violated the CLECs’ “rights to interconnect ‘at any technically feasible point’ within BellSouth’s network,” and that, as a result, the BOC had not satisfied its obligations under checklist items 1 and 9. *Georgia/Louisiana 271 Order* ¶ 207. The Commission rejected the CLECs’ argument because (a) the BellSouth policy at issue had been rescinded (*id.* ¶ 208); (b) a Section 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” (*id.*, citing *Kansas/Oklahoma 271 Order* ¶ 19); and (c) the issue concerned matters “open . . . before [the] Commission” in another docket. *Id.* All of these considerations apply here.

In short, Qwest has taken all the steps it possibly can to meet a broad interpretation of the filing obligations applicable to ILECs pending further clarification of this legal question. By doing so, Qwest has drawn a bright line between the past and the present, and eliminated this matter as even a potential reason to delay greater long distance competition for the public. The balance of this Supplemental Brief describes in more detail how QLDC satisfies the requirements of Section 272, and therefore assures the Commission that upon grant of this Consolidated Application Qwest immediately will be able to begin offering service in compliance with that provision. Qwest has done all that it can to open its local markets to competitors. Now it looks forward to bringing long distance savings and new services to its customers.

**II. THE REQUESTED AUTHORIZATIONS WILL BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 272**

Qwest is fully committed to providing interLATA services authorized by this Application through a separate affiliate that complies with the requirements of Section 272 and the Commission's rules. Immediately upon the effective date of the Commission's grant of Section 271 authority, QLDC will be prepared to provide the authorized in-region interLATA services on those terms. The Supplemental Declaration of Marie E. Schwartz ("Schwartz Supplemental Decl.") and the Declaration of Judith L. Brunsting for QLDC ("Brunsting QLDC Decl.") submitted today show that QLDC will be a fully compliant Section 272 affiliate upon grant of this consolidated application. 11/

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11/ QCC is continuing to operate as described in the Qwest I and Qwest II declarations of Judith L. Brunsting, although it will not provide in-region interLATA services at this time. The existing records in the Qwest I and Qwest II proceedings show that QCC also will be a fully compliant Section 272 affiliate upon completion of the restatement arising from the past period

**A. QLDC Is a Separate Affiliate as Required by Section 272(a)**

QC is a BOC as defined by the Act. QLDC is a separate affiliate as required by Section 272(a). Brunsting QLDC Decl. ¶¶ 14-17. QLDC satisfies the Section 272(a) requirement that a BOC may not provide in-region originating interLATA services except through an affiliate that both is “separate” from the BOC and meets the requirements of Section 272(b). QLDC is a duly formed and existing Delaware corporation. Both QC and QLDC are wholly-owned subsidiaries of Qwest Services Corporation, which, in turn, is a wholly-owned subsidiary of QCII. Neither QC nor QLDC owns any stock in the other. *Id.* ¶ 15. QLDC is not a subsidiary of the BOC or any affiliated ILEC.

**B. QC and QLDC Will Comply with the Structural and Transactional Requirements of Section 272(b)**

As explained below, QC and QLDC comply with the five requirements of Section 272(b).

**272(b)(1):** QLDC will operate independently from QC. QLDC does not and will not jointly own with QC any domestic transmission or switching facilities, or the land and buildings where they are located. QLDC has not engaged and will not engage in any operation, installation, or maintenance (OI&M) services with respect to switching and transmission facilities owned by QC as long as such a restriction applies. QC has never provided and is not currently providing OI&M services to QLDC, nor will it do so as long as a restriction applies. In fact, QLDC currently owns no telecommunications facilities and intends to commence operation as a switchless reseller, reselling the services of other, unaffiliated, long-distance carriers. In the

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transactions of QCC with third parties. Qwest does not know when that restatement process will be complete, resolving the Section 272 issue with respect to QCC. At such time QCC and QLDC may be merged, although no final decisions have been made as of now.

event that QLDC were to acquire facilities, it would operate, install, and maintain its own network, either directly or by contracting with third parties that are not affiliated with QC. Brunsting QLDC Decl. ¶¶ 19-20; Schwartz Supplemental Decl. ¶¶ 21-24.

**272(b)(2):** QLDC maintains its books, records, and accounts in the manner prescribed by the Commission that are separate from the books, records, and accounts of QC. QCC has established and maintains a chart of accounts that is separate from that of QC. QCC maintains expenditure controls to ensure that funds are expensed and accounted for properly. Brunsting QLDC Decl. ¶ 21a-i; Schwartz Supplemental Decl. ¶¶ 25-32. QLDC and QC use separate general ledger accounting software maintained at different locations. Brunsting QLDC Decl. ¶ 21f; Schwartz Supplemental Decl. ¶ 27.

QLDC maintains its books, records, and accounts in accordance with GAAP. Because it is a new company, QLDC's books, records, and accounts are not subject to past accounting irregularities, and the Commission can be assured that its books, records, and accounts will be maintained in accordance with GAAP. The records of the Qwest I and Qwest II proceedings show the measures that QCII, under the leadership of Oren Shaffer, who has been Chief Financial Officer of QCII since July 2002, has put into place to prevent, detect, and correct accounting irregularities in the future. Mr. Shaffer — who served as Chief Financial Officer of Ameritech for six years and as Chief Financial Officer of Goodyear Tire and Rubber Company before that — devoted significant time and effort to the question of QCII's past practices in accounting for the kinds of transactions identified in its July 29, 2002 SEC Form 8-K. Under his supervision and that of QCII's new Senior Vice President – Accounting and Financial Operations, QCII completed a two-month process of reconciliation involving approximately 4,500 individual accounts in QCII's general ledgers (including those of QC and QCC), and

established a process of ongoing monitoring of all balance sheet accounts. Mr. Shaffer also has relied upon the retention of approximately 20 experienced consultants in order to ensure the sufficiency of accounting resources to account for new transactions properly, and the creation of a new Projects and Analysis Group responsible for establishing and managing the accuracy of Qwest's books, records, and accounts and implementing internal control enhancements. He has overseen the centralization of the supervision of accounting functions from business units to the Senior Vice President, the hiring of an experienced Assistant Controller, an increase in staffing in the technical accounting group, and the consolidation of accounting responsibilities for cash, accounts receivable, assets, revenues, and other functions. 12/

**272(b)(3):** QC and QLDC have separate officers, directors, and employees. In the New York and Texas 271 orders, the Commission found that a comparison of the BOC and the Section 272 affiliate's officer and director lists and payrolls was sufficient to show compliance with Section 272(b)(3). *New York 271 Order*, 15 FCC Rcd at 4155 ¶ 409; *Texas 271 Order*, 15 FCC Rcd at 18551 ¶ 401. 13/ QC and QLDC also have implemented extensive controls to govern sharing of services in order to ensure that the companies operate independently and that confidential information is not shared between them. QC and QLDC also have a policy prohibiting loaning of employees between QC and QLDC. Brunsting QLDC Decl. ¶¶ 22-24 and Exh. JLB-QLDC-11; Schwartz Supplemental Decl. ¶¶ 33-39.

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12/ See Qwest *ex parte* statement 09/04/02d (Qwest Supplemental Section 272 Comments).

13/ The Commission has specifically rejected contentions that a BOC must provide detailed information regarding reporting relationships. See *Second Louisiana 271 Order*, 13 FCC Rcd at 20789-90 ¶ 330.

**272(b)(4):** QLDC has not obtained and will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of QC. Brunsting QLDC Decl. ¶¶ 25-28; Schwartz Supplemental Decl. ¶¶ 40-43.

**272(b)(5):** QC and QLDC will conduct all transactions with each other on an arm's-length basis, in accordance with this Commission's accounting rules, and will reduce all transactions to writing and make them available for public inspection. Procedures are in place to ensure that all Section 272 transactions comply with the Commission's affiliate-transaction rules; that they are reduced to writing, certified by an officer, and made available for public inspection at QC's headquarters; and that they are recorded at rates that comply with the Commission's rules. All goods, services, facilities and information provided by QC to QLDC will be made available to other unaffiliated IXCs at the same rates, terms and conditions. Brunsting QLDC Decl. ¶¶ 29-39; Schwartz Supplemental Decl. ¶¶ 44-57.

**C. QC Will Comply with the Nondiscrimination Safeguards of Section 272(c)**

As required by Section 272(c)(1), QC will not discriminate between QLDC and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. Like any other IXC, QLDC must contact a Wholesale Account Team at QC to obtain goods, services, facilities and information. Schwartz Supplemental Decl. ¶ 59. QC has established a Compliance Oversight Team and a rigorous review process to ensure that it satisfies the requirement to provide services to its Section 272 affiliate on a nondiscriminatory basis. This process also ensures that all goods, services, facilities and information provided by QC to QLDC are reduced to writing, disclosed and made available to unaffiliated entities, and priced according to the requirements of Section 272(b)(5). Schwartz Supplemental Decl. ¶¶ 59, 62. In addition, QC and its affiliates adhere to a

procurement policy that requires selection of suppliers of products and services without discrimination, based upon the best combination of total cost, quality, service, and availability.

*Id.* ¶ 60.

As required by section 272(c)(2), QC will account for all transactions with QLDC in accordance with the Commission's cost-allocation and affiliate-transaction rules. The Joint Cost Audit, annual SEC Form 10-K, and Cost Allocation Manual filings provide assurances that Qwest will comply with all required accounting principles. *Id.* ¶ 64.

**D. Qwest Will Comply with the Audit Requirements of Section 272(d).**

The BOC will obtain and pay for an independent auditor to conduct a joint Federal/State audit every two years in accordance with section 272(d) and the Commission's rules. A joint Federal/State biennial audit oversight team will determine the scope of each audit. The auditor will have access to the financial accounts and records of QC and QLDC to verify that all transactions conducted between them were appropriate under the requirements of Section 272. The FCC will be given access to the working papers and supporting materials of the independent auditor, with appropriate protection for proprietary information. *Id.* ¶¶ 66-69.

**E. Qwest Will Fulfill All Requests in Accordance with Section 272(e)**

Qwest will comply with the provisions of Section 272(e). QC will not discriminate in favor of QLDC with respect to requests for exchange and exchange-access services. QC's response time for requests for telephone exchange service and exchange access from unaffiliated entities will be no longer than its response times with respect to itself or its affiliates, *see* 47 U.S.C. § 272(e)(1); *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22019 ¶ 240, and it will provide goods, services, facilities and information concerning its provision of

exchange access on a nondiscriminatory basis. *See* 47 U.S.C. § 272(e)(2). QLDC will obtain such services from QC under the same tariffed terms and conditions as are available to unaffiliated IXCs. QC thus will charge QLDC an amount “no less than the amount charged to any unaffiliated interexchange carriers for such service,” as required by Section 272(e)(3). QC’s Wholesale Account Team will process orders in a nondiscriminatory manner. To the extent that QC provides interLATA or intraLATA goods, facilities, information or services to QLDC, they will be provided “at the same rates and on the same terms and conditions,” 47 U.S.C. § 272(e)(4), as are made available to all carriers. Schwartz Supplemental Decl. ¶¶ 70-71.

QC will maintain, update, and make available data on provisioning telephone exchange services and exchange access to QLDC. This performance data will be reported monthly, and the results will be posted on the Internet. *Id.* ¶ 75 and MES-QC-11. Because QLDC will commence operations as a switchless reseller, some of the metrics on this report will be inapplicable, at least initially, but the reports will include data on processing of PIC changes. *Id.* ¶ 72 and MES-QC-11.

**F. Qwest and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g)**

QLDC will not market or sell QC’s local exchange services except to the extent that QC permits other entities offering the same or similar service to do the same. *See* 47 U.S.C. § 272(g)(1). QC will not market or sell QLDC’s interLATA service originating in an in-region state unless and until the FCC has granted Section 271 authority for that state. *See* 47 U.S.C. § 272(g)(2). Brunsting QLDC Decl. ¶¶ 40-45; Schwartz Supplemental Decl. ¶¶ 73-76.

**G. The Education and Training Efforts of QC and QLDC Will Ensure Satisfaction of Their Obligations Under Section 272**

The declarations describe the ongoing, comprehensive, and targeted training programs designed to ensure that employees of QC and QLDC (as well as other Qwest companies) understand and strictly observe the requirements of Section 272. Schwartz Supplemental Decl. ¶¶ 77-85; Brunsting QLDC Decl. ¶¶ 47-50.

**III. REQUEST FOR EXPEDITED ACTION AND IMMEDIATE EFFECTIVENESS**

Qwest naturally is disappointed that it is not offering lower long distance prices and other competitive benefits to consumers in the nine application states today, pursuant to its original applications. We appreciate Chairman Powell's recognition that the "outstanding issues" from those applications "were very narrow," and that Qwest can "expeditiously resolve the outstanding issue that prevented approval." <sup>14/</sup> Qwest has taken steps to do so by immediately organizing QLDC and positioning it to provide services upon approval of this re-filed application. We are hopeful that the Commission similarly will be able to complete work on this matter in substantially less than the full ninety-day period provided by the Act. To that end, Qwest requests that the Commission establish an abbreviated comment schedule and complete its work on this matter as promptly as possible.

In that same vein, Qwest hereby respectfully requests that the Commission take no action at the time it grants Section 271 authority that would delay the date that Qwest could commence service. This request is consistent with Section 271(d)(3) of the Act and the public interest.

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<sup>14/</sup> See Statement of FCC Chairman Michael Powell on Withdrawal of Qwest's Multi-State 271 Applications (Sept. 10, 2002).

No party could suggest any legitimate reason for delaying the benefits of greater competition to consumers once the Commission has granted the underlying application. Qwest is aware that in earlier Section 271 proceedings the Commission has deferred the effective date of its orders so that interLATA service could not begin for several days. Without commenting on the appropriateness of such action in those cases, Qwest submits that no grounds for delay are present here, and asks that the Commission take no action at the time that it rules on the Consolidated Application that would prevent Qwest from beginning at once to provide the services authorized by such action.

#### **IV. CONCLUSION**

This Consolidated Application, and the Supplemental Brief and other materials submitted in support thereof, resolve all remaining questions regarding Qwest's satisfaction of all the requirements of Section 272. Along with Qwest's original applications and the records amassed in WC Docket Nos. 02-148 and 02-189, Qwest has fully demonstrated that the local exchange market in each of the application states is open to competition, that the company has satisfied its statutory checklist obligations and otherwise complied with the requirements of the Act - and that it will continue to do so in the future. Qwest's entry into the interLATA market in each of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming will fulfill the promise of competition for all the residents of those states.

Accordingly, for all the reasons stated herein and in Qwest's original applications,  
this Consolidated Application should be granted.

Respectfully submitted,

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