

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

In the Matter of:)
) **WC Docket No. 02-314**
Application by Qwest Communications)
International, Inc. for Authorization Under)
Section 271 of the Communications Act)
To Provide In-Region, InterLATA Service in)
the States of Colorado, Idaho, Iowa,)
Montana, Nebraska, North Dakota, Utah,)
Washington and Wyoming.)

**Comments of the
Nebraska Public Service Commission**

October 15, 2002

Anne C. Boyle, Chair
Gerald L. Vap, Vice-Chair
Frank E. Landis, Commissioner
Lowell C. Johnson, Commissioner
Rod Johnson, Commissioner

Nebraska Public Service Commission
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SUPPLEMENTAL COMMENTS

After a rigorous and exhaustive four year process, the Nebraska Public Service Commission (“Nebraska Commission”) concluded on June 12, 2002, that Qwest Corporation (“Qwest”) had satisfied the requirements of § 271(c) of the Telecommunications Act of 1996 (Act). On July 3, 2002, the Nebraska Public Service Commission recommended to the Federal Communications Commission (“FCC”) in WC Docket No. 02-148 that Qwest be permitted to enter the in-region interLATA long distance market.

However, on September 10, 2002, Qwest voluntarily withdrew its application in WC Docket No. 02-148 in order to address issues relating to its 272 affiliate, Qwest Communications Corporation (QCC). Specifically, Qwest stated that it withdrew its application to address concerns raised at the FCC regarding the application of generally accepted accounting principles (GAAP) to QCC in accordance with Section 272 of the Act which requires a local phone company’s long-distance affiliate to “maintain books, records, and accounts in the manner prescribed by the Commission.”

On September 30, 2002, Qwest refiled its 271 Application with the FCC, once again giving the Nebraska Commission the opportunity to submit comments and a recommendation from the Nebraska Commission regarding Qwest’s application.

While Qwest did not seek the Nebraska Commission’s approval of its new 272 affiliate prior to refileing its current application with the FCC, it is the understanding of the Nebraska Commission that the FCC will undertake a full and careful analysis of Qwest’s new 272 affiliate to ensure that it meets the standards of the Act. Despite the FCC’s pending review, the Nebraska Commission will in the near future independently review Qwest’s new 272 affiliate, Qwest LD Corporation, in a separate proceeding (Application No. C-2820) to ensure such entity should be certificated as an intrastate interexchange carrier in the state of Nebraska.

Since June 12, 2002, only a few matters relating to Qwest’s 271 application have come before the Nebraska Commission. On August 5, 2002, Qwest filed a revised Exhibit A to Qwest’s Nebraska SGAT providing lower rates for some Unbundled Network Elements (“UNEs”) and Local Interconnection Services (“LIS”). In as much as a number of the revised rates were lower than the rates previously established by the Nebraska Commission, and in light of the fact that no parties filed an opposition to Qwest’s Revised Exhibit A, such rates were allowed to go into effect on October 4, 2002.

On August 12, 2002, pursuant to Section 252(e)(2) of the Telecommunications Act of 1996, Qwest filed ten negotiated agreements between Qwest and CLECs for approval by the Nebraska Commission. Qwest stated that is was filing all contracts, agreements or letters of understanding between Qwest and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. No objections or interventions were filed in regards to any of the ten applications. After a review of these agreements, on September 24, 2002, the Nebraska Commission approved each part of the agreements for which Qwest sought

approval.¹ Nonetheless, the Nebraska Commission cannot say for certain that such previously undisclosed agreements did not impact the validity of the testing that was undertaken to demonstrate Qwest's compliance with the Section 271 checklist. The Nebraska Commission trusts that the FCC will perform its own full and careful analysis of Qwest's performance related to such agreements.

On August 20, 2002, Qwest filed a request seeking the Nebraska Commission's approval of a revised PO-20 performance measurement and payment scheme for inclusion in the Qwest Performance Assurance Plan ("QPAP"). As objections were raised regarding Qwest's request, the Nebraska Commission has scheduled a hearing in this matter for October 28, 2002.

On September 18, 2002, AT&T filed a Motion to Reopen and Supplement the Record in the Nebraska 271 docket C-1830. Qwest filed its Opposition to AT&T's Motion to Reopen and additional filings were made by each party. The Commission subsequently denied AT&T's Motion by order dated October 8, 2002.

<http://www.psc.state.ne.us/home/NPSC/communication/C-183002-10-08.PDF>

Finally, the Nebraska Commission has reviewed Qwest's August performance data. Based upon this most recent commercial performance, the Nebraska Commission continues to recommend approval of Qwest's 271 application.

Thus, the Nebraska Commission readopts and reaffirms the previous recommendation it made to the FCC on July 3, 2002, which stated, "in light of Qwest's achievements toward irreversibly opening its markets to competition, the Nebraska Commission at this time, recommends to the Federal Communications Commission that Qwest be allowed to enter the in-region interLATA long distance market." <http://www.nol.org/home/NPSC/C-1830Final02-06-12.PDF>"

¹ Nebraska Public Service Commission Dockets: C-2785: Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc., for the State of Nebraska; C-2786: Escalation Procedures and Business Solutions Agreement between Qwest Corporation and McLeodUSA, for the State of Nebraska; C-2787: Billing Settlement Agreement between Qwest Corporation and MCI Worldcom Network Services, Inc., for the State of Nebraska; C-2788: Business Escalation Agreement between Qwest Corporation and MCI Worldcom Network Services, Inc., for the State of Nebraska; C-2789: Settlement Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc., for the State of Nebraska; C-2790: Facility Decommissioning Agreement between Qwest Corporation and Covad Communications Company for Unbundled Loop Service, for the State of Nebraska; C-2791: Billing and Settlement Agreement and Release between U S West Communications, n/k/a Qwest Corporation and Aliant Midwest Inc. d/b/a Alltel, for the State of Nebraska; C-2792: U S West n/k/a Qwest Corporation's Service Level Agreement with Covad Communications Company for Unbundled Loop Service, for the State of Nebraska ; C-2793: Confidential Billing Statement Agreement between Qwest Corporation and Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc., for the State of Nebraska; C-2794: Facility Decommissioning Agreement between Qwest Corporation and Alltel Communications, Inc. for the State of Nebraska.

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**Concurring Opinion
Commissioner Anne C. Boyle**

October 15, 2002

The Nebraska Commission, forwards this recommendation and states Qwest is in compliance with Section 271 and that the Nebraska Commission will further review the Qwest 272 affiliate.

The purpose of the concurring opinion is to underscore comments made in Nebraska's approval and to state the need for the Federal Communication Commission's complete satisfaction that all necessary data has been provided and that Qwest has every intent to continue to make necessary adjustments to the network as needed and discovered on a timely basis.

As pointed out the in the July 3, 2002, concurring opinion by this Commissioner, "The discovery of secret agreements in Minnesota is another troubling matter. If there were such agreements which gave special treatment to a competitor or agreements which required a company to withdraw as a protestant in Qwest's 271 proceedings, the thoroughness of the process is questionable."

Even though, the tester, KPMG, stated they had reviewed the agreements and found no substantive changes in the testing, at a recent Regional Oversight Committee meeting, it was stated that at least one party to the agreements did not provide data for testing.

If conditional approval could be granted, this Commissioner would approve with no hesitation. Having said that, it must also be said that new leadership at Qwest has overcome some misgivings and allows me to lean toward approval of Qwest's entry into the long distance market.