Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International,	)	
Inc. Consolidated Application for	)	WC Docket No. 02-314
Authority to Provide In-Region, InterLATA	)	
Services in Colorado, Idaho, Iowa, Montana,	)	
Nebraska, North Dakota, Utah,	)	
Washington, and Wyoming	)	

EVALUATION OF THE UNITED STATES DEPARTMENT OF JUSTICE

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General

Margaret A. Ward
Counsel to the Assistant Attorney General

Michael L. Katz
Deputy Assistant Attorney General

Communications with respect to this document should be addressed to:

Nancy M. Goodman
Chief

W. Robert Majure
Assistant Chief

John Henly
Jeffrey Prisbrey
Economists
Economic Regulatory Section

Katherine E. Brown
Lauren J. Fishbein
Peter A. Gray
Joyce B. Hundley
Jodi A. Smith
Attorneys

Telecommunications and Media
Enforcement Section

October 22, 2002

Table of Contents

Table of Contents ii

Index of Full Citations iii

Introduction and Summary 1

I. Manual Handling of Orders 5

II. Electronically Auditable Billing 7

III. Testing for Line-Sharing Orders 8

IV. Section 272 Compliance 9

V. Conclusion 10

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
DOJ Evaluations and Related Materials	
DOJ Arkansas/Missouri Evaluation	Evaluation of the U.S. Department of Justice, *In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Arkansas and Missouri*, FCC CC Docket No. 01-194 (Sept. 24, 2001), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Kansas/Oklahoma Evaluation	Evaluation of the U.S. Department of Justice, *In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, FCC CC Docket No. 00-217 (Dec. 4, 2001), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Michigan Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Michigan*, FCC CC Docket No. 97-137 (June 25, 1997), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri*, FCC CC Docket No. 01-88 (May 9, 2001), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ New Jersey II Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, FCC CC Docket No. 02-67 (Apr. 15, 2002), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Oklahoma I Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application of SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, FCC CC Docket No. 97-121 (May 16, 1997), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Qwest Multistate I Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota,* FCC CC Docket No. 01-148 (July 23, 2002), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
DOJ Qwest Multistate II Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming*, FCC CC Docket No. 01-189 (Aug. 21, 2002), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Rhode Island Evaluation	Evaluation of the U.S. Department of Justice, *In re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Rhode Island*, FCC CC Docket No. 01-324 (Jan. 4, 2002), *available at* <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.
DOJ Texas II *Ex Parte*	U.S. Department of Justice, Evaluation of SBC Texas Section 271 Application, U.S. Department of Justice *Ex Parte* Submission, FCC CC Docket No. 00-65 (June 13, 2000).
FCC Orders, Reports, and Related Materials	
FCC Chairman Powell Qwest Withdrawal Statement	Statement of FCC Chairman Michael Powell on Withdrawal of Qwest's Multi-State 271 Applications, FCC News Release (Sept. 10, 2002), *available at* <http://www.fcc.gov/Daily_Releases/Daily_Digest/2002/dd020911.html>.
FCC Forfeiture Notice and Order	Notice of Apparent Liability for Forfeiture and Order, *In re: SBC Communications, Inc. Apparent Liability for Forfeiture*, 16 FCC Rcd 19,091 (Oct. 16, 2001), *available at* <http://www.fcc.gov/Daily_Releases/Daily_Digest/2001/dd011016.html>.
FCC Georgia/Louisiana Order	Memorandum Opinion and Order, *In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 17 FCC Rcd 9018 (May 15, 2002), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications>.
FCC Michigan Order	Memorandum Opinion and Order, *In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20,543 (Aug. 19, 1997), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications>.
FCC New York Order	Memorandum Opinion and Order, *In re: Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Services in the State of New York*, 15 FCC Rcd 3953 (Dec. 22, 1999), *aff'd, AT&T Corp. v. FCC,* 220 F.3d 607 (D.C. Cir. 2000), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications>.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
FCC Qwest Declaratory Judgment	Memorandum Opinion and Order, *In re: Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, FCC 02-276 (Oct. 4, 2002), *available at* 2002 WL 31204893 *and* <http://www.fcc.gov/Daily_Releases/Daily_Digest/2002/dd021004.html>.
FCC Texas Order	Memorandum Opinion and Order, *In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas,* 15 FCC Rcd 18,354 (June 30, 2000), *available at* <http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications>.
State Commission Orders and Related Materials	
Colorado PUC Comments	Comments of the Public Utilities Commission of the State of Colorado, *In re: Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Idaho PUC Comments	Written Consultation of the Idaho Public Utilities Commission, *In re: Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Iowa UB Comments	Iowa Utilities Board Written Consultation Regarding Qwest Communications International, Inc., *In re: Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Montana PSC Comments	Comments of the Montana Public Service Commission, *In re: Application by Qwest Corporation Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Montana*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Nebraska PSC Comments	Comments of the Nebraska Public Service Commission, *In re: 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*, FCC WC Docket No. 02-314 (Oct. 15, 2002).

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
North Dakota PSC Comments	Supplemental Comments of the North Dakota Public Service Commission, *In re: Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Utah PSC Comments	Comments of the Public Service Commission of Utah, *In re: Qwest Communications International, Inc., September 30, 2002 Consolidated Application for Section 271 Authorization in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Washington UTC Comments	Supplemental Comments of Washington Utilities and Transportation Commission, *In re: Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Wyoming PSC Comments	Comments of the Wyoming Public Service Commission, *In re: Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Qwest's Application and Related Filings	
Qwest Applications Withdrawal *Ex Parte*	Qwest Communications International Inc., Withdrawal of Section 271 Multistate Applications for Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-148 & -189 (Sept. 10, 2002).
Qwest BOS-BDT I *Ex Parte*	Qwest Communications International Inc., BOS-BDT Billing Information, Qwest *Ex Parte* Submission, FCC WC Docket No. 02-314 (Sept. 4, 2002).
Qwest BOS-BDT II *Ex Parte*	Qwest Communications International Inc., Additional BOS-BDT Billing Information, Qwest *Ex Parte* Submission, FCC WC Docket No. 02-314 (Oct. 11, 2002).
Qwest Br.	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, *In 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,* FCC WC Docket No. 02-314 (Sept. 30, 2002).
Qwest LSR/SO Mismatches *Ex Parte*	Qwest Communications International Inc., LSR/SO Mismatches Update, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-148 & -189 (Aug. 20, 2002).

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
Qwest Multistate I DOJ Issues *Ex Parte*	Qwest Communications International Inc., Response to Issues Raised by DOJ, Qwest *Ex Parte* Submission, FCC WC Docket No. 02-148 (July 10, 2002).
Qwest Multistate II Notarianni/Doherty Reply Decl.	Reply Declaration of Lynn M.V. Notarianni and Christie L. Doherty, *attached to* Reply Comments of Qwest Communications International Inc., *In re: Qwest Communications International Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-189 (Aug. 26, 2002), as Tab 5.
Qwest Pricing Correction *Ex Parte*	Qwest Communications International Inc., Corrections to UNE Rate Reductions Information, Qwest *Ex Parte* Submission, FCC WC Docket No. 02-314 (Oct. 11, 2002).
Qwest Pricing *Ex Parte*	Qwest Communications International Inc., UNE Rate Reductions, Qwest *Ex Parte* Submission, FCC WC Docket No. 02-314 (Oct. 7, 2002).
Qwest Response to FCC OSS Concerns *Ex Parte*	Qwest Communications International Inc., Response to FCC Concerns Regarding OSS, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-148 & -189 (Aug. 8, 2002).
Qwest Response to MLT Allegations *Ex Parte*	Qwest Communications International Inc., Response to AT&T Allegations, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-314 (Oct. 21, 2002).
Qwest Service Order Accuracy Comparison *Ex Parte*	Qwest Communications International Inc., Post-System Enhancement Service Order Accuracy Comparison Data, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-148 & -189 (Aug. 23, 2002).
Qwest Teitzel Decl.	Declaration of David L. Teitzel, *attached to* Qwest Br. App. A as Tab 1.
Qwest Unfiled Agreements Commitment *Ex Parte*	Qwest Communications International Inc., Unfiled Interconnection Agreements Commitment, Qwest *Ex Parte* Submission, FCC WC Docket Nos. 02-148 & -189 (Aug. 20, 2002).
Third-Party Comments and Affidavits/Declarations	
AT&T Comments	Comments of AT&T Corp., *In re: Qwest Communications International, Inc.'s Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
AT&T Finnegan/Connolly/Wilson Decl.	Joint Declaration of John F. Finnegan, Timothy M. Connolly, and Kenneth L. Wilson on Behalf of AT&T Corp., *attached to* AT&T Comments as Tab E.
AT&T Stemple Decl.	Declaration of Edward F. Stemple on Behalf of AT&T Corp., *attached to* AT&T Comments as Tab A.

INDEX OF FULL CITATIONS	
Short Citation	**Full Citation**
Covad Comments	Comments of Covad Communications Company, *In re: Applications by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
Covad Qwest Multistate I Comments	Comments of Covad Communications Company, *In re: Applications by Qwest Communications International, Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota*, FCC WC Docket No. 02-148 (July 3, 2002).
Eschelon Comments	Comments of Echelon Telecom, Inc. in Opposition to the Application of Qwest, *In re: Application by Qwest for Authorization Under Sec. 271 to Provide In-Region, InterLATA Service in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, *attached to* Comments of WorldCom, Inc., *In re: Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (Oct. 15, 2002), as Tab 1.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International,	)	
Inc. Consolidated Application for	)	WC Docket No. 02-314
Authority to Provide In-Region, InterLATA	)	
Services in Colorado, Idaho, Iowa, Montana,	)	
Nebraska, North Dakota, Utah,	)	
Washington, and Wyoming	)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice ("the Department"), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996[1] ("the 1996 Act"), submits this Evaluation of the Joint Application filed by Qwest Communications International, Inc. on September 30, 2002, to provide in-region, interLATA services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. Qwest's Joint Application to the Federal Communications Commission ("FCC" or "Commission") is its second for long distance authority in all of these states. It follows Qwest's withdrawal of two Joint Applications for long distance authority in Colorado, Idaho, Iowa, Nebraska, and North Dakota, and in Montana, Utah, Washington, and Wyoming, respectively, due to its inability to respond to questions regarding its compliance with the requirements of Section 272 of the 1996 Act.[2]

---

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

[2] Qwest Applications Withdrawal *Ex Parte* at 1 (noting FCC staff "has raised questions regarding the issue of whether Qwest Communications Corporation, the designated Section 272 affiliate, can be said to meet the requirements of Section 272 given pending restatement of its financial statements for past periods"); *see also*

The Department submitted its Evaluation of Qwest's first multistate application on July 23, 2002.[3] Concerns related to Qwest's manual processing of CLEC orders and its provision of electronically auditable wholesale bills precluded the Department from supporting that application as filed.[4] Nonetheless, the Department acknowledged that Qwest had submitted substantial additional evidence which, if sufficiently meaningful and reliable, would justify the grant of long distance authority in those five states.[5] The Department also urged the Commission to carefully consider the adequacy of Qwest's benchmark calculations in evaluating whether the prices in certain states fell within the range that a reasonable application of TELRIC would produce.[6]

The Department's Evaluation of Qwest's second multistate application, filed on August 21, 2002, reiterated that the application as filed did not sufficiently demonstrate the adequacy of Qwest's manual order processing or the electronic auditability of its wholesale bills

---

FCC Chairman Powell Qwest Withdrawal Statement at 1 ("[Q]uestions remain regarding whether Qwest has complied with the safeguards set forth by Congress in section 272 of the Act."); *cf. FCC Texas Order* ¶ 400 (noting SBC submitted additional, unchallenged evidence to demonstrate that its Section 272 affiliate maintained books, records and accounts in accordance with Generally Accepted Accounting Principles ("GAAP")).

[3] This Evaluation incorporates by reference the DOJ Qwest Multistate I Evaluation and DOJ Qwest Multistate II Evaluation.

[4] DOJ Qwest Multistate I Evaluation at 14-25, 33.

[5] *Id.* at 2. The Department's Evaluation also addressed the possible impact on the Department's Section 271 analysis of Qwest's failure to have publicly filed certain interconnection agreements for state approval. *Id.* at 2-5. Although the Department found that the allegations were serious, it did not find that they necessarily implicated its analysis of whether the local exchange markets *are* at the time of application fully and irreversibly open to competition, or that resolution and remedy of the possible Section 251 or 252 violations were required to be addressed in the pending Section 271 docket. Since then, the Commission has ruled on Qwest's motion for declaratory judgment, describing Qwest's view of the Act's filing requirement as overly narrow and stating that any agreement that creates an "ongoing obligation" related to the Act's requirements should be filed pursuant to Section 252. *FCC Qwest Declaratory Judgment* ¶ 8. The Commission specifically noted that its ruling did not preclude continuing or future state enforcement action related to these issues. *Id.* ¶ 10. Pursuant to a May 2002 order of the Iowa Utilities Board, as well as its own commitment to the FCC, by August Qwest had filed for approval in each of the applicant states agreements with CLECs which include any "ongoing obligations." Qwest Unfiled Agreements Commitment *Ex Parte*; Qwest Br. Tab 13 at 1-3.

[6] DOJ Qwest Multistate I Evaluation at 31-32.

but that additional evidence could support approval of both multistate applications.[7] The Department also expressed concern regarding Qwest's testing of line-sharing orders and again urged the Commission to be sure that the rates supporting the applications fell within an appropriate range.[8] Qwest continued to file *ex parte* information on these issues almost until the applications were withdrawn, and its re-filed application also includes updated information pertaining to these issues in all nine states.[9]

Qwest's re-filed application focuses on the recent actions it has taken to comply with Section 272 and relies primarily on evidence submitted during its initial multistate applications to prove compliance with the market-opening requirements of Section 271.[10] Although commenters oppose Qwest's re-filed application on various grounds, all but one of the nine state commissions have submitted comments supporting approval of Qwest's Section 271 applications for their respective states.[11]

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company ("BOC") should be permitted only when the local markets in a state have been "fully and irreversibly" opened to competition.[12] The levels of competitive entry have not changed significantly since the Department found that Qwest had generally succeeded in opening

---

[7] DOJ Qwest Multistate II Evaluation at 10-17.

[8] *Id.* at 17-18, 19-21.

[9] Qwest has submitted an additional month of performance data and has updated the information regarding competitive entry into the local market in the relevant states. Qwest Br. Attach. 5 App. D (Aug. 2002 Performance Results); Qwest Teitzel Decl. (state of local entry).

[10] Qwest Br. at 4.

[11] *See* Colorado PUC Comments at 1; Idaho PUC Comments at 3; Iowa UB Comments at 2; Nebraska PSC Comments at 2; North Dakota PSC Comments at 1; Utah PSC Comments at 1; Washington UTC Comments at 2; Wyoming PSC Comments at 2, 6. *But see* Montana PSC Comments at 1-3 (recommending FCC deny application based on Qwest's failure to fulfill two state-level conditions regarding reverse line-splitting and mitigation of price squeeze). The Department has previously addressed the conditions the Montana PSC seeks to impose. DOJ Qwest Multistate II Evaluation at 5 n.17.

[12] *See* DOJ Oklahoma I Evaluation at vi-vii, 36-51.

its local markets in these nine states.[13] The current record of entry therefore does not raise issues beyond those addressed in the Department's prior Qwest Multistate evaluations. In addition, the Department continues to defer to the Commission's ultimate determination regarding whether the prices supporting Qwest's applications are appropriately cost-based.[14] Moreover, and as discussed below, the Department finds that the record has improved with respect to the other issues about which it previously had expressed reservations: manual order processing, the provision of electronically auditable wholesale bills, and the testing of line-sharing orders.

Beyond these issues, however, the Department finds troubling an affidavit filed by AT&T in which a former Qwest employee declares that Qwest personnel "diminish[ed] the visibility" of certain information to Commission staff who were visiting the Qwest CLEC Coordination Center.[15] The former employee states that a Mechanized Loop Test ("MLT") was run routinely as part of the provisioning process for hot-cut loops but that this fact was hidden from regulators.[16] At that time, CLECs were requesting pre-order access to Qwest's MLT capabilities in order to pre-qualify loops for DSL service and also were expressing concerns that Qwest had collected MLT information that it had not loaded into its Raw Loop Data Tool, to which CLECs submit pre-qualification queries.[17] The affidavit suggests that Qwest, in its eagerness to protect

---

[13] *Compare* Qwest Teitzel Decl. at 10-11, 19-20 *with* DOJ Qwest Multistate I Evaluation at 10-14 *and* DOJ Qwest Multistate II Evaluation at 7-10.

[14] *See* DOJ Rhode Island Evaluation at 6; DOJ Missouri I Evaluation at 1-2; DOJ Kansas/Oklahoma Evaluation at 11. Qwest has continued to modify its UNE rates. Qwest Pricing *Ex Parte*; Qwest Pricing Correction *Ex Parte*. These modifications may render moot the Department's previously expressed concerns. *See* DOJ Arkansas/Missouri Evaluation at 7.

[15] AT&T Stemple Decl. ¶ 12 & Attach. 1 at 1 (e-mail from Qwest manager to Qwest CLEC Coordination Center ("QCCC") employees).

[16] *Id*. ¶¶ 5-7 (Mechanized Loop Test ("MLT") routinely performed), 8-10 (MLT references hidden from regulators).

[17] *See* Covad Qwest Multistate I Comments at 22-25 (requesting pre-order MLT access); 16-22 (requesting an audit of Qwest's Raw Loop Data Tool ("RLDT") in the belief that not all MLT data were loaded into the tool).

its position, sought to limit the information available to regulatory decision-makers.[18] Qwest has disputed this account and maintains that it is irrelevant to its Section 271 application, but admits that references to MLTs were removed from chart-boards in advance of visits by regulators to the QCCC.[19] Although the substantive effect of the alleged action remains unclear,[20] the procedural implications are disturbing.[21] The Department recommends that the Commission assure itself that it has full and accurate information with regard to this allegation before proceeding to address the remainder of the issues raised by Qwest's re-filed application.[22]

I. Manual Handling of Orders

In its Evaluations of Qwest's prior multistate applications, the Department expressed concerns about the accuracy of its manual processing of CLEC orders.[23] In response, Qwest produced specially generated performance measurement data as well as new data pursuant to

---

[18] AT&T Stemple Decl. Attach. 1 at 1 (e-mail stating "we don't want to bring attention to [MLT] in front of the FCC as they may have a tendency to respond to CLEC requests in a manner which may be unfavorable to us").

[19] Qwest Response to MLT Allegations *Ex Parte* at 1-5.

[20] AT&T's allegations that Qwest's hot-cut provisioning process included running the MLT with the results stored in an unnamed Qwest system, AT&T Stemple Decl. ¶¶ 5-7, do not directly contradict Qwest's previous assertions regarding the MLT information that initially populated and is used to refresh its RLDT, *see* Qwest Multistate II Notarianni/Doherty Reply Decl. ¶¶ 46-52 (responding to Covad's assertion that Qwest had "hoarded" MLT information and explaining how Qwest refreshes its RLDT on a monthly basis using updated sample MLT information); *see also* Covad Qwest Multistate I Comments at 19 (describing bulk MLTs run by Qwest to initially populate RLDT with loop-length information and asserting Qwest maintained the remaining MLT information in separate database for use by its retail sales representatives).

[21] *See FCC Forfeiture Notice and Order* ¶ 42 ("The duty of absolute truth and candor is a fundamental requirement for those appearing before the Commission.").

[22] Eschelon raises two issues that the Department commends to the Commission's careful attention. First, Eschelon complains that customer-affecting troubles, including outages on UNE-platform lines, which occur at or immediately after conversion are not reflected in Qwest's regularly reported performance data. Eschelon Comments at 8-20, 27-30. Second, Eschelon reiterates its earlier complaints regarding missing usage records and now attaches a third-party audit to substantiate its claims. *Id*. at 47-53. WorldCom alleges, without quantification, that Qwest returns completion notices for UNE-platform orders regardless of whether the order has actually been provisioned. WorldCom Lichtenberg Decl. ¶ 33. "SOCs are key notifiers and must be timely and accurate." DOJ Qwest Multistate I Evaluation at 18 n.80. The extremely abbreviated briefing schedule established by the Commission has led the Department to note these issues, but not resolve them. *See* DOJ New Jersey II Evaluation at 9 n.40.

[23] DOJ Qwest Multistate I Evaluation at 16-22; DOJ Qwest Multistate II Evaluation at 10-14.

proposed performance measures to demonstrate that its manual processing of CLEC orders was acceptably accurate.[24] In this re-filed application, Qwest has produced an additional month's data on the accuracy of its manual service order processing as well as its overall provisioning of features.[25] Commenters continue to assert that Qwest's manual processing is poor, that its data inaccurately depict its performance due to flaws in measurement techniques, and that the proposed metric fails to reflect several key indicia.[26]

Qwest's data suggest that its current service order accuracy performance is consistent with that of other BOCs whose Section 271 applications have been approved.[27] However, Qwest's fulfillment of its commitments to maintain as well as improve the accuracy of its service order processing deserves close monitoring, and its continued collection and reporting of data on this process will be critical to ensuring the adequacy of its post-entry performance.[28]

---

[24] Qwest Multistate I DOJ Issues *Ex Parte* Tab 5 at 16-17 (sample data suggesting a 97 percent manual accuracy rate); Qwest Response to FCC OSS Concerns *Ex Parte* at 5 (new PID PO-20 data showing approximately 90 percent manual accuracy); Qwest Service Order Accuracy Comparison *Ex Parte* at 1-2 (showing August 17 system enhancement to automate certain edits raised handling accuracy to more than 95 percent for resale and UNE-platform); Qwest LSR/SO Mismatches *Ex Parte* at 3 (specially generated data showing accuracy rate of 95 to 98 percent on manually processed features orders).

[25] Qwest Br. Tab 1 at 2 (PID PO-20 data for August showing nearly 93 percent manual accuracy for resale and UNE-platform), 5 (recalculating the PID PO-20 data as if the mid-month enhancement had been in place for the entire month, resulting in more than 93 percent accuracy for resale and UNE-platform), 7-9 (showing approximately 99 percent overall processing accuracy based on Call Center Data).

[26] *See, e.g.,* AT&T Finnegan/Connolly/Wilson Decl. ¶¶ 66-70; Eschelon Comments at 34-37.

[27] *FCC New York Order* ¶¶ 173-74 & n.548 (restated data showed Bell Atlantic [Verizon] achieved 87 percent service order accuracy); *FCC Georgia/Louisiana Order* ¶ 159 n.577 (data showed BellSouth achieved 90 to 95 percent service order accuracy).

[28] DOJ Qwest Multistate II Evaluation at 14 n.65. As long as the relevant data are available, the Department takes no position on whether they should be included in a revised PID PO-20, a revised PID OP-5++ (also referred to as "Service Order Accuracy -- Call Center Detail") or some other PID. *Id.*; Qwest Br. Tab 1 at 1-4 (explaining development and definition of PO-20), 7-9 (explaining development and definition of OP-5++). *See also supra* notes 22 and 26.

II. Electronically Auditable Billing

In its Evaluations of Qwest's prior multistate applications, the Department expressed concerns about the electronic auditability of its wholesale bills.[29] Qwest did not adequately address this matter in its initial applications and had to submit substantial additional evidence in *ex parte* and reply filings.[30] The Department determined that this additional evidence demonstrated that Qwest provided electronically auditable billing for CLECs with moderate billing volumes, but that it did not provide sufficient proof that its systems were adequate for CLECs with large volumes.[31]

In its re-filed application, Qwest has provided additional detail regarding the electronic auditability of its ASCII- and EDI-formatted CRIS bills, including those for CLECs with larger billing volumes, and also has updated the status of its Bill Output Specifications-Bill Data Type ("BOS-BDT") implementation.[32] It appears that only one CLEC operating in Qwest's region demands full implementation of BOS-BDT billing in order to electronically audit its wholesale bills.[33] Qwest's implementation of BOS-BDT has improved each month[34] but remains sufficiently imperfect that Qwest will not permit CLECs to designate the BOS-BDT bill as the

---

[29] DOJ Qwest Multistate I Evaluation at 23-25; DOJ Qwest Multistate II Evaluation at 14-17.

[30] *Id.*

[31] DOJ Qwest Multistate II Evaluation at 16.

[32] Qwest Br. Tab 5 at 1-14 (suggesting Qwest's CRIS-generated bills, in any format, can provide much of the detail AT&T claims is provided by other BOCs, and explaining how Qwest and CLECs can jointly restructure electronic bill format in order to overcome apparent line limitation of certain commercial software); *see also* Qwest BOS-BDT I *Ex Parte* at 1-6; Qwest BOS-BDT II *Ex Parte* at 1-4.

[33] AT&T Finnegan/Connolly/Wilson Decl. ¶¶ 76, 87; *see also* Qwest Br. Tab 5 at 12 (noting WorldCom's exploration of receiving bills in EDI format), 13 (noting interest of two unnamed CLECs now receiving ASCII bills in receiving BOS-BDT formatted bills).

[34] Qwest BOS-BDT I *Ex Parte* at 1-6 (nine problems identified with July BOS-BDT bill were corrected before August bills were sent; four problems identified on July or August bills are being corrected); Qwest Br. Tab 5 at 13-14 (reiterating that the four problems previously identified are being addressed and noting another); Qwest BOS-BDT II *Ex Parte* at 1-4 (providing updates on five BOS-BDT problems and planned fixes).

bill of record.[35] The Department expects Qwest to fully support the continued development of its BOS-BDT wholesale billing system so that CLECs can receive their wholesale bills in a format consistent with that offered by other BOCs and compatible with the CLECs' systems. However, it appears that CLECs' ability to audit their bills electronically is sufficient to support a positive assessment of Qwest's wholesale billing capabilities.[36]

III. Testing for Line-Sharing Orders

The Department previously expressed concern about Qwest's failure to implement the same line-sharing router testing for wholesale customers as for retail customers.[37] Qwest's re-filed application notes its agreement to develop and implement a router-testing option as part of its line-shared loop provisioning process.[38] Covad's comments voice the hope that Qwest will commit to conduct by the end of the first quarter of 2003 router testing in central offices ("COs") where it already does such testing for its retail customers, at no additional charge to CLECs, and to implement such testing in additional COs for the benefit of CLECs as it does so for retail customers.[39] Qwest's accommodation of Covad's needs would be responsive to the Department's concern that CLECs have nondiscriminatory access to router testing.

---

[35] AT&T Finnegan/Connolly/Wilson Decl. ¶ 105.

[36] *Cf. FCC New York Order* ¶ 215 (observing that Bell Atlantic [Verizon] was in the process of developing an application-to-application interface for local service maintenance and repair that "would afford carriers a more complete opportunity to compete[, although] the lack of integration does not necessarily constitute discriminatory access, provided that the BOC otherwise demonstrates that it provides equivalent access to its maintenance and repair functions.").

[37] DOJ Qwest Multistate II Evaluation at 17-18. Covad had complained that the line-sharing verification test previously agreed to as part of the provisioning of line-shared loops was proving inadequate in actual commercial experience and therefore requested that Qwest perform router testing for Covad as it does for retail customers. *Id.* The record contained no justification for Qwest's failure to follow the same provisioning process for wholesale and retail customers. *Id.*

[38] Qwest Br. Tab 9 at 1.

[39] Covad Comments at 2 & n.2.

IV. Section 272 Compliance

Late in the FCC's process of assessing its first two multistate applications, Qwest formally notified the Commission that it could not certify that the accounting records of its Section 272 affiliate Qwest Communications Corporation had been maintained in accord with Generally Accepted Accounting Principles ("GAAP"),[40] thereby raising questions as to its compliance with that provision of the 1996 Act.[41] The Department has opined that the safeguards of Section 272 are "necessary (though not sufficient)" to protect the interLATA market once Section 271 authority is granted in any particular state.[42] Although the Department has never conditioned a recommendation of approval on a finding of Section 272 compliance,[43] these regulatory safeguards have ramifications for protecting the integrity of the local market.[44] Therefore, the Department concurs with FCC Chairman Powell's statement that compliance with the statutory requirements is a necessary prerequisite for the grant of authority to provide interLATA service in any particular state.[45] The Department relies on the Commission to make the ultimate determination regarding Qwest's compliance with the regulations implementing Section 272 and supports the Commission's resolve to investigate this matter.

---

[40] Qwest Applications Withdrawal *Ex Parte* at 1.

[41] FCC Chairman Powell Qwest Withdrawal Statement at 1.

[42] DOJ Michigan Evaluation at 27-29 (noting questions whether Ameritech's posting of affiliate transactions was sufficient to deter or detect discrimination, cross-subsidization or other anticompetitive behavior).

[43] *See, e.g.,* DOJ Texas II *Ex Parte* at 1, 20 (recommending approval of SBC's application subject to the Commission's assuring itself as to the reliability of certain performance data, without addressing Section 272 concerns); *FCC Texas Order* ¶ 400 (noting questions regarding SBC's Section 272 affiliate's compliance with GAAP and their resolution by SBC's submission of additional evidence).

[44] *See, e.g., FCC Michigan Order* ¶ 345 ("'Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, a BOC that discriminates against the rivals of its affiliates could entrench its position in local markets by making these rivals' offerings less attractive.'" (quoting *FCC Non-Accounting Safeguards Order*)).

[45] *See* FCC Chairman Powell Qwest Withdrawal Statement at 1.

V. Conclusion

With respect to most of the issues about which the Department previously had expressed concern, Qwest's re-filed application demonstrates improvement. The Department reiterates its deference to the Commission's determination whether Qwest's pricing is appropriately cost-based and whether Qwest complies with Section 272. Moreover, the Department urges the Commission to evaluate carefully the allegations pertaining to Qwest's withholding of full information from regulators. Subject to the Commission's assuring itself that those and several other concerns raised in this Evaluation have been resolved, the Department recommends approval of Qwest's application.

Respectfully submitted,

/s/ Nancy M. Goodman
Nancy M. Goodman
Chief

Katherine E. Brown
Lauren J. Fishbein
Peter A. Gray
Joyce B. Hundley
Jodi A. Smith
Attorneys

Telecommunications and Media
Enforcement Section

Antitrust Division
U.S. Department of Justice
1401 H Street, NW, Suite 8000
Washington, DC 20530
(202) 514-5621

Charles A. James
Assistant Attorney General
Antitrust Division

R. Hewitt Pate
Deputy Assistant Attorney General
Antitrust Division

Michael L. Katz
Deputy Assistant Attorney General
Antitrust Division

Margaret A. Ward
Counsel to the Assistant Attorney General
Antitrust Division

W. Robert Majure
Assistant Chief

John Henly
Jeffrey Prisbrey
Economists
Economic Regulatory Section

October 22, 2002

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on October 22, 2002.

/s/ Joyce M. Hundley
Joyce M. Hundley
Attorney
Telecommunications and Media
Enforcement Section
Antitrust Division
U.S. Department of Justice

Service List

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Janice Myles
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C327
Washington, D.C. 20554

Michael Carowitz
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Gary Remondino
Wireline Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C140
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Patrick J. Fahn
Chief Engineer
Public Utilities Division
North Dakota Public Service Commission
State Capitol
600 East Boulevard
Dept. 408
Bismarck, ND 58505-0480

Julie Orchard
Utah Public Service Commission
Herber M. Wells Building
Fourth Floor
160 East 300 South
Salt Lake City, UT 84111

Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

Stephen G. Oxley
Secretary and Chief Counsel
Wyoming Public Service Commission
2515 Warren Ave., Suite 300
Cheyenne, WY 82002

Bruce Smith
Colorado Public Utilities Commission
Logan Tower Office Level 2
1580 Logan Street
Denver, CO 80203

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
Post Office Box 83720
Boise, Idaho 83702

Penny Baker
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319-0069

Chris Post
Nebraska Public Service Commission
301 Centennial Mall South
Post Office Box 94713
Lincoln, NE 68509-4713

Steve Vick
Utility Division Administrator
Montana Public Service Commission
P.O. Box 202601
Helena, MT 59620

Chairman Gary Feland
Vice Chairman Jay Stovall
Commissioner Bob Anderson
Commissioner Matt Brainard
Commissioner Bob Rowe
Montana Public Service Commission
1701 Prospect Ave.
P.O. Box 202601
Helena, MT 59620-2601

Chairman Stephen F. Mecham
Commissioner Richard M. Campbell
Commissioner Constance B. White
Utah Public Service Commission
Herber M. Wells Building
Fourth Floor
160 East 300 South
Salt Lake City, UT 84111

Chairwoman Marilyn Showalter
Commissioner Richard Hemstad
Commissioner Patrick J. Oshie
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

Chairman Steve Ellenbecker
Deputy Chairman Steve Furtney
Commissioner Kristin H. Lee
Wyoming Public Service Commission
Hansen Building, Suite 300
2515 Warren Ave.
Cheyenne, WY 82002

Chairman Diane Munns
Mark Lambert
Elliot Smith
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319

President Susan E. Wefald
Commissioner Leo M. Reinbold
Commissioner Anthony T. Clark
North Dakota Public Service Commission
600 East Boulevard
Bismarck, ND 58505

Chairman Raymond L. Gifford
Commissioner Polly Page
Commissioner Jim Dyer
Public Utilities Commission
State of Colorado
1580 Logan Street, OL2
Denver, CO 80203

President Paul Kjellander
Commissioner Marsha H. Smith
Commissioner Dennis S. Hansen
Deputy Attorney General Weldon B. Stutzman
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Chair Anne C. Boyle
Vice-Chair Gerald L. Vap
Commissioner Frank E. Landis
Commissioner Lowell C. Johnson
Commissioner Rod Johnson
Nebraska Public Service Commission
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509

R. Steven Davis
Dan L. Poole
Andrew D. Crain
John L. Munn
Lynn A. Stang
Qwest Communications International Inc.
1801 California Street
Suite 4700
Denver, CO 80202

Peter A. Rohrbach
Mace J. Rosenstein
Linda Oliver
David L. Sieradzki
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street NW
Washington, D.C. 20004
Counsel for Qwest Communications International Inc.

Megan Doberneck
Senior Counsel
Praveen Goyal
Senior Counsel for Government and Regulatory Affairs
Jason D. Oxman
Assistant General Counsel
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, D.C. 20005

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402-2456

Andrew D. Lipman
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for OneEighty Communications, Inc.

Patrick J. Donovan
Rogena Harris
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for Integra Telecom

Marc A. Goldman
Jenner & Block, LLC
601 13th Street, N.W., Suite 1200
Washington, D.C. 20005
Counsel for WorldCom, Inc.

Brooks E. Harlow
David L. Rice
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
Attorneys for the Northwest Public Communications Council

Craig D. Joyce
Walters & Joyce, P.C.
2015 York Street
Denver, CO 80205
Attorney for the Colorado Payphone Association

Gregory A. Ludvigsen
Ludvigsen's Law Offices
3801 E. Florida, Suite 400
Denver, CO 80210
Attorney for the Minnesota Independent Payphone Association

Susan Callaghan
Senior Counsel
Touch America, Inc.
130 North Main Street
Butte, Montana 59701

Randall B. Lowe
Davis Wright Tremaine LLP
1500 K Street, NW
Suite 450
Washington, D.C. 20005

Lisa B. Smith
Lori E. Wright
WorldCom, Inc.
1133 19th St., N.W.
Washington, D.C. 20036

Marybeth M. Banks
H. Richard Juhnke
Sprint Communications Company L.P.
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

Mark C. Rosenblum
Lawrence J. Lafaro
Richard A. Rocchini
AT&T CORP.
900 Route 202/206 North
Room 3A227
Bedminster, NJ 07920

Mary B. Tribby
AT&T Communications of the Mountain States, Inc.
1875 Lawrence Street, Room 1575
Denver, Colorado 80202

Staci L. Pies
Director, Federal Regulatory Affairs
Level 3 Communications, LLC
8270 Greensboro Drive
Suite 900
McLean, VA 22102

Joseph McNeal
PageData
6610 Overland Rd.
Boise, ID 83709