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March 21, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Application by Qwest Communications International Inc.
for Authority to Provide In-Region InterLATA Services in
New Mexico, Oregon, and South Dakota;
WC Docket No. 03-11**

Dear Ms. Dortch:

On behalf of Qwest Communications International Inc. ("Qwest"), I am submitting for the record in this proceeding a copy of an *Order Regarding Interim Pricing Structure For Extended Unbundled Dedicated Interoffice Transport*, issued yesterday by the New Mexico Public Regulation Commission. This *Order* addresses matters discussed in Qwest's *ex parte* letter filed on March 4, 2003 in this proceeding. Qwest intends to file a revised SGAT Exhibit A in a timely manner, consistent with the requirements of the *Order*.

If you have any questions, please contact me.

Respectfully submitted,



David L. Sieradzki
Counsel for Qwest Communications
International Inc.

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Marlene H. Dortch

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Enclosure

cc: Deena Shetler
Marv Sacks

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF QWEST)	
CORPORATION'S SECTION 271)	
APPLICATION AND MOTION FOR)	Utility Case No. 3269
ALTERNATIVE PROCEDURE TO)	
MANAGE THE SECTION 271 PROCESS)	
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AND

IN THE MATTER OF THE CONSIDERATION)	
OF COSTING AND PRICING RULES FOR)	
OSS, COLLOCATION, SHARED TRANSPORT,)	Utility Case No. 3495
NON-RECURRING CHARGES, SPOT FRAMES,)	
COMBINATION OF NETWORK ELEMENTS)	
AND SWITCHING)	
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AND

IN THE MATTER OF QWEST)	
CORPORATION'S STATEMENT OF)	
GENERALLY AVAILABLE TERMS)	Case No. 03-00025-UT
PURSUANT TO SECTION 252(f) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	
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**ORDER REGARDING INTERIM PRICING STRUCTURE FOR
EXTENDED UNBUNDLED DEDICATED INTEROFFICE TRANSPORT**

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission" or "NMPRC") on its own motion pursuant to 17 NMAC 1.2.39.E(4). Being duly advised in the premises, the Commission **FINDS AND CONCLUDES:**

1. On March 4, 2003, Qwest Corporation ("Qwest") filed with the Federal Communications Commission ("FCC") in WC Docket No. 03-11¹ an *ex parte* regarding the FCC Wireline Competition Bureau's inquiry concerning Qwest's New Mexico rate structure for

¹ *In the Matter of the Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 03-11 (filed Jan. 15, 2003).

extended unbundled dedicated interoffice transport (“E-UDIT”). As the handout entitled “Transport Rate Structure in New Mexico” attached to the *ex parte* in issue imparts, the Wireline Competition Bureau’s inquiry addresses why the Commission, “in its comments before the FCC, indicates that it ordered a distance-sensitive rate structure for entrance facilities (‘EUDIT’) in a **Nov. 20, 2001** order in the **Section 271 docket** [Utility Case No. 3269], but Exhibit A of Qwest’s SGAT (listing rates) does not include such a structure.” (emphasis in original). Qwest’s answer to the Wireline Competition Bureau is that “Exhibit A of Qwest’s New Mexico SGAT includes the rate levels and rate structure ordered in the PRC’s **Aug. 27, 2002** decision in **Phase A of the pricing docket** [Utility Case No. 3495].” *Id.* (emphasis in original).

2. The November 20, 2001 order referenced in the handout to the Qwest *ex parte* is the Commission’s *Group 4 Order*.² In the *Group 4 Order*, the Commission found that the distinction between E-UDIT and UDIT should be eliminated and, consequently, that these two dedicated transport link arrangements should be treated as a single UNE.³

3. However, remaining for the Commission’s resolution was Qwest’s related position that the UDIT/E-UDIT UNE is necessarily comprised of two distinct pricing components. Consistent with its decision eliminating the distinction between UDIT and E-UDIT, the Commission decided that in the interim, pricing for E-UDIT should be based on a distance sensitive, flat rate charge, modeled on Qwest’s UDIT rate structure.⁴ The Commission nonetheless afforded Qwest the ability to present evidence in the Cost Docket that might lead to

² *Order Regarding Facilitator’s Report On Checklist Item 2 (Access To Unbundled Network Elements), Checklist Item 4 (Access To Unbundled Loops), Checklist Item 5 (Access To Unbundled Local Transport) And Checklist Item 6 (Access To Unbundled Local Switching) (Group 4 Order)* (Nov. 20, 2001)

³ *Id.* at 69, ¶ 210.

⁴ *Id.* at 69-70, ¶ 212.

an adjustment of UDIT/E-UDIT rates to reflect the difference in the cost of service (assuming such a showing could, or can, be made).⁵ Accordingly, the Commission directed Qwest to modify its SGAT to reflect both the elimination of the distinction between E-UDIT and UDIT and the pricing of E-UDIT on an interim basis, *i.e.*, until permanent rates are set in Phase B of the Cost Docket, in conformity with Qwest's distance sensitive pricing structure for UDIT.

4. On November 30, 2001, Qwest filed in Utility Case No. 3537⁶ the fourth revision to its New Mexico SGAT that included, among other things, amendments to SGAT §§ 9.6.1.1, 9.6.3.1 and 9.6.3.2, thereby eliminating the distinction between E-UDIT and UDIT. However, as Exhibit A to the fourth revision reveals, Qwest did not provide a distance sensitive rate structure for E-UDIT in conformity with the *Group 4 Order's* express direction to do so. Instead, unlike the third revision dated October 26, 2001, which included a non-distance sensitive rate structure for E-UDIT DS1, DS3, OC-3, OC-12 and OC-48 levels, § 9.6.9 of Exhibit A to the fourth revision indicates only that rates for E-UDIT were "Under Development."⁷

5. Several successive revised versions of Qwest's SGAT filed between December 28, 2001 and July 8, 2002 contain nothing more than the identical "Under Development" phrase, although the Commission notes that, beginning with the sixth revision (April 12, 2002), Qwest revised § 9.6.9 of Exhibit A to provide for, at some, unspecified future date, recurring and non-recurring charges for DS1, DS3, OC-3, OC-12 and OC-48. Nevertheless, in the ninth revision

⁵ *Id.*

⁶ On January 28, 2003, the Commission entered orders that, among other things, closed Utility Case No. 3537 and opened in its stead Case No. 03-00025-UT, which bears the same caption as Utility Case No. 3537.

⁷ See *Order on Rehearing Concerning Aspects of Order Regarding Qwest's Performance Assurance Plan*, Utility Case Nos. 3269 & 3537 (Aug. 13, 2002) (*QPAP Rehearing Order*), at 23, ¶ 56 ("Qwest's disregard of the Commission's rules is also shown by the fact that rather than, as called for by the Commission's rules, submitting a compliant QPAP as Exhibit K to the SGAT that is duly noted as being subject to a motion for rehearing or variance, Qwest's most recent SGAT filing contains an "Exhibit K" consisting of a single page on which nothing more than the phrase "UNDER DEVELOPMENT" appears").

filed with the Commission on July 19, 2002, § 9.6.9 of Exhibit A contains recurring and non-recurring non-distance sensitive prices for the aforementioned E-UDIT DS and OC levels that were neither approved nor adopted by the Commission. Qwest's tenth revision, filed on August 30, 2002, contains the same unapproved rates featured in the ninth revision. However, in an *errata* also filed on August 30, 2002, Qwest submitted corrected rates for E-UDIT that purport to comply with the Commission's *Final Order for Phase A*. Notwithstanding the correction, the E-UDIT rates set forth in the amended Exhibit A to the tenth revision likewise consist of non-distance sensitive rates that stand in stark contrast with the immediately preceding distance sensitive UDIT rate structure set forth in Exhibit A.

6. Qwest's current SGAT Exhibit A § 9.6.9 contains rates for E-UDIT that conflict with the express requirement in the *Group 4 Order* that Qwest implement a distance sensitive pricing structure for E-UDIT in conformity with its UDIT pricing structure. The Commission finds that the conflict should be resolved by canceling and immediately suspending the E-UDIT rates set forth in Qwest's SGAT Exhibit A. In their stead, the Commission finds that Qwest should be directed to promptly file an amended Exhibit A that contains an E-UDIT pricing structure that complies with the explicit direction contained in the *Group 4 Order* and provides rates that are just, reasonable and non-discriminatory. 17.11.18.14.A NMAC.

7. The Commission's Utility Division procedural rules provide that "[t]he Commission on its own motion may at any time reopen any proceeding when it has reason to believe that conditions of fact or law have so changed to require, or that the public interest requires, the reopening of such proceeding." 17 NMAC 1.2.39.E(4).

8. Given the facts coming to the Commission's attention in light of the *ex parte* filed by Qwest in WC Docket No. 03-11 on March 4, 2003, the Commission finds that good cause

exists and that the public interest otherwise requires the reopening of the Phase A proceedings and related SGAT proceedings for the purpose of ensuring that Qwest has implemented distance sensitive rates for E-UDIT consistent with the *Group 4 Order* and in conformity the ordering provisions set forth below.

9. The Commission makes no specific findings at this time regarding Qwest's failure to amend Exhibit A of its SGAT as expressly provided for in the *Group 4 Order*. Nevertheless, Qwest hereby is reminded of the Commission's expectation and requirement that parties in proceedings before the Commission comply with the letter as well as the spirit of its rules, most notably, in this instance, those provisions of the Commission's rules going to actual and full compliance with the Commission's orders.⁸

10. The Commission has jurisdiction over the parties and the subject matter of this case.

Consistent with the foregoing findings and conclusions, the Commission hereby

ORDERS:

A. The E-UDIT interim rates set forth in § 9.6.9 of Qwest's current SGAT Exhibit A hereby are canceled and suspended effective immediately.

B. On or by March 27, 2003, Qwest shall file with the Commission an amended Exhibit A to its SGAT that contains a proposed interim pricing structure for E-UDIT that is in actual and full compliance with the *Group 4 Order's* requirement that the pricing structure for E-UDIT should be based on a distance sensitive, flat rate charge modeled on Qwest's UDIT rate structure. Additionally, Qwest shall simultaneously submit a proposed procedure for the

⁸ See, e.g., *QPAP Rehearing Order*, at 23-25, ¶¶ 56-61; *Final Order Regarding Compliance with Outstanding Section 271 Requirements: SGAT Compliance, Track A, and Public Interest*, Utility Case Nos. 3269 & 3537, 3495 and 3750 (Oct. 8, 2002), at 34, ¶ 83 and n.82.

Commission's consideration, approval and adoption of its proposed interim distance sensitive pricing structure for E-UDIT. Any such proposal must take into account and address applicable requirements of the Telecommunications Act of 1996⁹ and the Commission's rules.¹⁰

C. Interested parties may, and Staff of the Commission's Utility Division shall, file comments in response to Qwest's amended Exhibit A and its proposed procedure on or by April 4, 2003.

D. Copies of this *Order* shall be served on all parties of record in the above-captioned cases.

E. This *Order* is effective immediately.

⁹ See, e.g., 47 U.S.C. § 252(f)(2), incorporating by reference 47 U.S.C. §§ 251 and 252(d). The Telecommunications Act of 1996 – Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* – amended the Communications Act of 1934.

¹⁰ 17.11.18.14, 17.11.18.15 and 17.11.18.16 NMAC.

Issued under the seal of the Commission at Santa Fe, New Mexico, this 20th day of
March 2003.

NEW MEXICO PUBLIC REGULATION COMMISSION

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