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March 31, 2003

VIA E-MAIL

Maureen Del Duca
Deputy Chief, Investigations and Hearings Division
FCC Enforcement Bureau
445 12th Street, S.W.
Washington, DC 20554

Re: In the Matter of the Merger of Qwest Communications International, Inc.
and U S West Inc., CC Docket No. 99-272

Dear Maureen:

Qwest discloses in its March 7, 2003 *ex parte* that in addition to the six violations disclosed in Qwest's December 3, 2002 *ex parte*, it has identified additional "matters ... recently uncovered" that constitute violations of the *Qwest Merger Orders* and Section 271.¹ Specifically, Qwest discloses that:

- Since the date of the US WEST merger, Qwest has unlawfully provided -- and continues to provide unlawfully -- four in-region interLATA private lines to Triumph

¹ Memorandum Opinion and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd. 5376 (March 10, 2000) ("*March 10 Merger Order*"); Memorandum Op. and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 11909 (June 26, 2000) ("*June 26 Merger Order*") (collectively the "*Qwest Merger Orders*").

Communications; one in-region interLATA private line to Electric Lightwave, Inc.;² and one in-region interLATA private line to Teleglobe.

- From the date of the US WEST merger until well into 2000 -- and in one case until June, 2002 -- Qwest unlawfully provided 33 in-region interLATA private line services to unspecified customers.
- In violation of Section 271, Qwest currently provides in-region operator services from platforms in Texas and New Mexico.
- In violation of Section 271, Qwest currently provides dial access network link services in-region to Touch America, using AT&T and Verizon facilities to connect Sandpoint, Idaho and Spokane, Washington.

Even before these two *ex partes*, Qwest had quantified the revenues it had received from its post-merger “conscious and deliberate”³ decision to provide in-region interLATA service in the form of lit fiber capacity IRUs, which AT&T has established were nothing more than private line service, as somewhere between \$261 million⁴ and \$531 million.⁵ The 45 additional private line arrangements identified in these two *ex partes*⁶ further demonstrate the pervasiveness and materiality of Qwest’s violations, and also put into question the thoroughness and utility of the merger audits which never identified these violations. AT&T believes it is now past time to impose sanctions on Qwest for its material violations of both the *Qwest Merger Orders* and Section 271.

Moreover, the notion that the violations identified in the March 7 *ex parte* have

² In a March 25, 2003 *ex parte*, Qwest disclosed that the Electric Lightwave private line was taken out of service on March 24, 2003.

³ *Touch America, Inc. v. Qwest Communications International, Inc.*, File No. EB-02-MD-003, Amended Answer of Defendants Qwest Communications International, Inc., Qwest Corporation, and Qwest Communications Corporation (“Qwest’s Answer to the *IRU formal complaint*”), ¶ 94.

⁴ See, AT&T’s October 28, 2002 *ex parte* and Qwest’s Answer to the *IRU formal complaint* ¶ 175.

⁵ See, AT&T’s October 30, 2002 *ex parte* and <http://www.sec.gov/Archives/edgar/data/1037949/000095013402013021/0000950134-02-013021-index.htm>

been “recently uncovered” or that their disclosure now reflects Qwest’s “forthright” manner in disclosing violations is, at least with respect to Teleglobe and Electric Lightwave, undercut by the history of litigation regarding those two customers in this and related proceedings. In fact, Qwest’s in-region interLATA arrangements with Teleglobe and Electric Lightwave have been the subject of dispute for over a year and Qwest has consistently denied that its arrangements with either of these two customers has violated the *Qwest Merger Orders* or Section 271.⁷

Specifically, Touch America alleged in formal complaint proceedings it initiated over a year ago that Qwest’s “lit fiber capacity IRUs” with Teleglobe and its arrangement with Electric Lightwave denominated as “corporate communications traffic” were no more than private line in-region interLATA service arrangements prohibited by both the *Qwest Merger Orders* and Section 271.⁸ Qwest, in answering those complaints, averred that its arrangements with Teleglobe were not in violation of either the *Merger Order* or Section 271, and “denie[d] ... that it provides prohibited in-region interLATA telecommunications services to” Electric Lightwave.⁹

Arthur Anderson, as part of this merger proceeding, investigated Touch America’s

⁶ As discussed more fully below, it is unclear whether or not the Teleglobe and Electric Lightwave private line services are in addition to, or the same as, those previously identified in this proceeding.

⁷ The Commission should require Qwest to disclose the identities of the unspecified customers in the March 7, 2003 *ex parte* because it may well be the case that those customers were previously brought to Qwest’s attention in filings in this proceeding.

⁸ Complaint, *Touch America, Inc. v. Qwest, Communications International, Inc.*, File No. EB-02-MD-003 (Feb. 2002) (“*IRU formal complaint*”). ¶¶ 75 and 78 (Teleglobe) and Complaint, *Touch America, Inc. v. Qwest, Communications International, Inc.*, File No. EB-02-MD-004 (Feb. 11, 2002) (revised and refiled March 1, 2002) (“*Divestiture formal complaint*”) ¶¶ 354 and 441 (Electric Lightwave). It is unclear whether the private line arrangement disclosed here is in addition to, or the same as, those discussed in those filings, and the Commission should require Qwest to clarify this.

allegations and issued a report on March 11, 2002 stating that Qwest continued to believe that “Touch America’s allegations are without merit.” *Id.* at 1 (emphasis added). AT&T filed comments demonstrating that Qwest’s arrangements with Teleglobe and Electric Lightwave identified in the Touch America formal complaints were nothing more than private line arrangements and did indeed violate both the *Qwest Merger Orders* and Section 271.¹⁰ Nevertheless, until its March 7, 2003 *ex parte*, Qwest has continued to deny that its arrangements with Teleglobe and Electric Lightwave (and the other customers identified in both the Touch America complaints and the AT&T filings) violated the *Qwest Merger Orders* or Section 271.¹¹

For the reasons set forth in AT&T’s prior *ex parte*, and as further explained herein,

⁹ Answer to the *IRU formal complaint* ¶ 75; Answer to the *Divestiture formal complaint* ¶ 354.

¹⁰ See AT&T’s March 2002 Audit Report Comments at 6 and 11 (Qwest transported in-region interLATA service for Teleglobe by mischaracterizing that traffic as lit fiber capacity IRUs) and 25 (Qwest transported in-region interLATA service for Electric Lightwave in violation of the *Qwest Merger Orders* and Section 271 by mischaracterizing that traffic as “corporate communications traffic”).

¹¹ As reported in a subsequent June 3, 2002 audit; Qwest similarly took this position at the Enforcement Bureau meeting on July 23, 2002. It should be noted that the other violations identified by Qwest in its March 7, 2003 *ex parte* (the routing of Touch America’s in-region operator services traffic to out-of-region Qwest hubs for support with termination over Qwest’s network, *id.* at 2, and arranging for an interLATA link permitting Qwest to provide dial-up Internet access to ISPs serving northern Idaho, *id.* at 3) confirm the concerns expressed by AT&T during the merger proceedings that because of Qwest’s overly narrow reading of Section 271, Qwest would improperly attempt to carry the out-of-region portion of traffic originating in-region. AT&T’s May 5, 2000 Comments at 15-17 (discussing operator services) and 30-34 (Internet access services); AT&T’s June 2, 2000 *ex parte* 1-6 (discussing all services). The Commission’s Order reflected the fact that parsing a unitary interLATA transmission in this manner would violate Section 271. For example, the Commission made it clear that it had approved the Internet access portion of the Divestiture plan only because Qwest had modified its original proposal and now agreed that, as the Internet service provider (ISP), it would hand its traffic off to the GSP who would carry the traffic across in-region LATA boundaries and then out-of-region to the Internet, using the GSP’s own network or “via its arrangements with other [Internet] backbone providers” and the Order expressly provided that Qwest would not “direct traffic to a Qwest router out-of-region.” *June 26 Merger Order*, ¶ 38.

AT&T again requests that the Commission impose meaningful sanctions as discussed in AT&T's May 2, 2002 and December 19, 2002 Comments. In this case, "justice delayed" has truly become "justice denied."

Sincerely,

A handwritten signature in black ink that reads "Aryeh Friedman". The signature is written in a cursive style with a long horizontal flourish at the end.

Aryeh Friedman

cc: Mark Stone
Anthony Dale
Jonathan S. Marashlian
John C. Keene