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April 4B, 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"), this letter responds to AT&T's April 1, 2003 *ex parte* letter (from James P. Young of Sidley Austin Brown & Wood), regarding Qwest's rates for transport/entrance facilities and transit charges. This letter also summarizes matters discussed during an *ex parte* presentation today to Christopher Libertelli, Legal Advisor to Chairman Powell, conducted by conference call. Melissa Newman, Jeff Owens, Tom Freeberg, and Jerry Thompson of Qwest and the undersigned participated in the presentation.

AT&T rehashes arguments on entrance facilities that it has made before on numerous occasions. Qwest has already refuted these arguments in the Thompson/Freeberg Reply Declaration in this proceeding (¶¶ 4-16), and in the record of previous Qwest 271 applications. The bottom line is that the FCC has already "reject[ed] AT&T's concern with the way Qwest charges for unbundled local transport," turning down virtually identical AT&T arguments and finding that the state commissions did not commit a clear TELRIC error in deciding "to permit Qwest to impose flat-rated non-distance sensitive charges for connections between a Qwest switch and a competitive LEC switch." *Qwest 9-State 271 Order*, ¶¶ 364-65.

Moreover, AT&T's profferred comparison between Qwest's actual rates and the rates AT&T would prefer (AT&T *ex parte*, page 3) says nothing about the reasonableness of Qwest's state commission-approved rates. Qwest already has shown that its transport/entrance facilities rates are reasonable, particular when compared with approved rate levels in other 271-approved states. *See* Thompson/Freeberg Reply Declaration, ¶ 15; Reply Exh. JLT/TRF-1.

In addition, AT&T misleadingly argues that the logic of the New Mexico Public Regulation Commission ("NM PRC") order regarding the Enhanced Unbundled Dedicated Interoffice Transport ("EUDIT") element should apply to Entrance Facilities charges as well. AT&T *Ex Parte* at 3. AT&T ignores the fact that, while Entrance Facilities and the EUDIT element are functionally similar, they are distinct offerings. The "Entrance Facilities" offering listed in the Local Interconnection Service ("LIS") section of Qwest's SGATs consists of interconnection trunks between Qwest's network and an interconnecting carrier's network pursuant to Section 251(c)(2) of the Act. In an Entrance Facility local interconnection service arrangement, Qwest provides transport facilities between the carrier's selected point of interconnection and the Qwest wire center that serves that location. 1/ Thus, wireless carriers, facilities-based CLECs, and other carriers that do not use Qwest UNEs may well have need for LIS Entrance Facilities. In addition, carriers that provide long-distance as well as local service, and that already use private lines or special access facilities for non-local services, can use such facilities as an alternative to LIS Entrance Facilities, and face no additional LIS charge if they do so. When Qwest provides LIS Entrance Facilities for two-way trunking of local traffic, the rate Qwest recovers for the cost of such facilities is reduced by a "relative use factor" reflecting the proportion of the local traffic that flows from Qwest to the CLEC over the facility. 2/

1/ *See* Thomas R. Freeberg Declaration (Checklist Item 1 – Interconnection), ¶¶ 18-19, 65-66; N.M SGAT § 7.1.

2/ *See* Thomas R. Freeberg Declaration (Checklist Item 13 – Reciprocal Compensation), ¶ 22; N.M. SGAT § 7.3.1.1.3.1; 47 C.F.R. § 51.709(b).

By contrast, EUDIT is an unbundled network element offered pursuant to Section 251(c)(3) of the Act. 3/ Unlike LIS Entrance Facilities, EUDIT (UNE) facilities are dedicated exclusively to the use of the CLEC, and the rate is not adjusted to reflect Qwest's relative use of the facilities. As with other UNEs, EUDIT may be ordered in combination with other UNEs, but generally may not be commingled with facilities used for non-local service. Moreover, like other UNEs, EUDIT may be (and often is) connected to a CLEC's collocation facility; by contrast, carriers use LIS Entrance Facilities as an *alternative* to collocation to establish connections between their networks and Qwest's network. 4/

The NM PRC recently issued an order requiring Qwest to modify its SGAT Exhibit A with regard to the EUDIT UNE, and Qwest implemented the required changes. 5/ With Qwest's compliance filing, all ambiguity concerning the legitimacy of Qwest's EUDIT rates in New Mexico has been resolved. Concerning LIS Entrance Facilities, the NM PRC based its order on a conclusion that there

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3/ *See* Karen A. Stewart Declaration (Checklist Item 5 – Transport), ¶ 9 n.17; N.M. SGAT § 9.6.9.

4/ *See* Thomas R. Freeberg Declaration (Checklist Item 13 – Reciprocal Compensation), ¶¶ 17-21.

5/ *See Ex Parte* Letter from David L. Sieradzki, Counsel for Qwest, to Marlene Dortch, FCC, WC Docket No. 03-11, March 21, 2003 (transmitting NM PRC's March 20, 2003 order); *Ex Parte* Letter from David L. Sieradzki, Counsel for Qwest, to Marlene Dortch, FCC, WC Docket No. 03-11, March 28, 2003 (transmitting Qwest SGAT revisions to comply with NM PRC March 20, 2003 order).

Qwest explained in an earlier *ex parte* filing that a November 2001 order in the NM PRC's Section 271 proceeding had required Qwest to implement a flat-rate, distance sensitive charge for the EUDIT element. Qwest had complied with that directive. Qwest also stated that subsequent orders in the NM PRC's UNE pricing proceeding in 2002 apparently had reached different results, leading to confusion as to the NM PRC's preferred rate structure for the EUDIT element. *See Ex Parte* Letter from David L. Sieradzki, Counsel for Qwest, to Marlene Dortch, FCC, WC Docket No. 03-11, March 4, 2003. The NM PRC's March 20, 2003 order resolved the apparent inconsistency and clarified Qwest's obligations in this regard.

should be no difference between the rates for EUDIT and the interoffice transport UNE (UDIT), but the NM PRC to date has not issued any such order with regard to Entrance Facilities, which serve a different purpose and are offered under different terms and conditions. To the extent AT&T disputes Qwest's rates for Entrance Facilities, it should raise the issue with the NM PRC and other state commissions, and not, for the first time, before the FCC in a Section 271 proceeding.

Finally, with respect to the transit issue raised on the last page of AT&T's *ex parte* letter, Qwest has already acceded to AT&T's demands. Thompson/Freeberg Reply Declaration, n.29; *see generally id.*, ¶¶ 17-20. If AT&T claims billing adjustments for past periods, it should raise that dispute before the NM PRC and/or other appropriate forums – not before the FCC in the context of a Section 271 application.

The twenty page limit does not apply. If you have any questions, please contact me.

Respectfully submitted,

David L. Sieradzki
Counsel for Qwest Communications
International Inc.

Enclosure

cc: Christopher Libertelli
Deena Shetler
Marv Sacks