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Vice President-Federal Regulatory

May 23A, 2003

EX PARTE

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

**Re: Application of Qwest Communications International
Inc. for Authority to Provide In-Region InterLATA
Services in Minnesota;
WC Docket No. 03-90**

Dear Ms. Dortch:

At the request of the Commission staff, Qwest Communications International Inc. (“Qwest”) is providing the attached list of contracts with CLECs pending before the Minnesota Public Utility Commission (“MPUC”). These contracts were filed on March 25 or 26 and, pursuant to the deadlines established in Section 252(e) of the Telecommunications Act, will be addressed by the MPUC or be deemed approved by operation of law within 90 days of filing.

Each of the contracts on the attached list was among the approximately one hundred contracts with CLECs that Qwest provided in September and October of 2001 to the Minnesota Department of Commerce (“the Department”), the agency that handled the investigation into Qwest’s compliance with Section 252 of the Act in that state. The Department reviewed each of these contracts to determine whether or not it was an “interconnection agreement” under Section 252.

In a complaint filed February 14, 2002, the Department identified provisions in four of the contracts on the attached list as “interconnection agreements” that should have been filed under Section 252.^{1/} In doing so, the Department proposed that the MPUC apply an interpretation of Section 252 that paralleled the standard ultimately adopted by the Commission in its October 2002 *Declaratory Ruling* on the subject.^{2/} Qwest responded to the complaint on

^{1/} The Department also took the position that seven other written agreements and an oral agreement should have been filed, but those contracts are terminated and not implicated here. Six of the agreements were formally terminated long before the March 25 and 26 filings. Termination of the seventh, the April 19, 2000 Service Level Agreement with Covad, was formalized more recently. This agreement had not been operational between the parties for some time because its terms had been superseded by other developments affecting Covad and all CLECs. Earlier this year Covad and Qwest agreed to reflect this fact by formally terminating the contract. The parties signed a termination letter dated April 29, 2003.

^{2/} See *Memorandum Opinion and Order, Qwest Communications International Inc.*, 17 FCC Rcd 19337 (Oct. 4, 2002) (“*Declaratory Ruling*”).

March 1, 2002, by making public the provisions of the contracts identified by the Department (including these four), and filing them with the MPUC on a conditional basis. Qwest advised the MPUC that, if it agreed with the Department that the provisions fell within the scope of Section 252, they should be accepted and approved as interconnection agreements under the Act. This matter was discussed at the MPUC's next meeting on March 5, 2002. At that time the MPUC chose a different process. The MPUC decided to defer consideration of the contracts pending hearings on the question of whether they constituted interconnection agreements in the first place; the parties agreed that the conditional filing would not be deemed to trigger the 90 day deadline in Section 252(e) in order to accommodate the MPUC's review processes without the overhang of that deadline. Those hearings, and related penalty proceedings, have since occurred over the past year. The MPUC subsequently determined that the contracts cited by the Department were interconnection agreements. The MPUC has imposed penalties premised on a per-day calculation from the date of a contract's execution until March 1, 2002, when Qwest presented the contracts to the Commission as discussed above.

All of the other contracts filed in March 2003 and referenced on the attached list also were provided to the Department in 2001. The Commission has recognized the role of the states in making case-by-case fact determinations as to whether a particular contract falls within the definition of an "interconnection agreement."^{3/} The Department did a comprehensive investigation into Qwest's agreements with CLECs and did not identify any others as falling within the scope of Section 252's filing requirement.

Qwest agrees with this determination. However, notwithstanding that these contracts have not been at issue in Minnesota, Qwest nevertheless has filed them with the MPUC, as it has done in other states. This is consistent with Qwest's policy of erring on the side of overfiling to ensure that there can be no further controversy regarding Qwest's compliance with Section 252.^{4/}

In short, Qwest stands in the same position in Minnesota with respect to this matter as it did in the other 12 states where the Commission has approved the company's applications for authority under Section 271. If any further questions arise in connection with this matter, please contact the undersigned.

Respectfully submitted,

/s/

Melissa Newman

^{3/} *Id.* at para. 10.

^{4/} Given enforcement proceedings that have occurred related to Section 252 compliance, Qwest would note that it does not concede that these contracts fall into the zone of mandatory filing under the Act. However, the company's intention is to apply a broad going forward standard and file all contracts arguably implicating Section 251(b) or (c) unless a state commission affirmatively refuses to accept them, and the company has been following that practice for some time in its region.

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