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VIA ECFS

EX PARTE

January 16, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160*, WC Docket No. 05-333

Dear Ms. Dortch:

Qwest Communications International Inc. ("Qwest") in this proceeding has asked the Federal Communications Commission ("FCC" or "Commission") to forbear from enforcing its dominant carrier regulations with respect to Qwest's provision of in-region interstate interexchange carrier ("IXC") services. As Qwest has demonstrated in previous submissions in this proceeding, because it lacks market power in the provision of these services, the imposition of the FCC's dominant carrier regulatory regime would be not only wholly unnecessary, but also flatly inconsistent with the interests of consumers, both residential as well as business, in Qwest's in-region territory.[1]

Qwest is permitted to offer in-region interLATA IXC services subject to non-dominant carrier regulation only if Qwest continues to comply with the structural separation and other requirements of Section 272 of the Communications Act of 1934, as amended ("Act") even though Qwest's statutory obligation to comply with that section has expired in all of its in-region states.[2] As a consequence, Qwest today is forced needlessly to incur costs and operate

[1] *See In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunset Pursuant To 47 U.S.C. § 160*, Petition for Forbearance, filed Nov. 22, 2005 (as corrected, Nov. 30, 2005), WC Docket No. 05-333. *See also* Qwest *ex parte* filed Dec. 7, 2006, WC Docket No. 05-333, Qwest *ex parte* filed Dec. 7, 2006, WC Docket No. 02-112, CC Docket No. 00-175 and WC Docket No. 05-333.

[2] *See* 47 U.S.C. § 272(f)(1).

inefficiently in its provision of these services to business and residential customers. In contrast, none of the competing wireless, wireline, cable and Voice over Internet Protocol ("VoIP") providers of such in-region toll services labors under such obligations.

The Section 272 requirements are onerous. Section 272(b)(1) requires the interLATA affiliate of a Bell Operating Company ("BOC") to operate separately and at arms length from the BOC.[3] In 1996, the Commission adopted rules to implement this statutory mandate.[4] The Section 272 rules also require Qwest's Section 272 affiliates to maintain separate officers, directors, and employees as well as separate books, records, and accounts.[5] The Section 272 rules further prohibit the BOC and its affiliate from jointly owning switching and transmission facilities as well as the land and buildings where they are located and require the BOC to offer to unaffiliated entities the same products and services it offers to its Section 272 affiliate on the same terms and conditions even if the services are also available from third parties.[6]

The Commission previously has recognized that the establishment of separation requirements imposes significant costs on the affected carriers, undermining their incentives and ability to compete efficiently and deploy innovative services. In its *Computer Inquiry* rulemaking, for example, the Commission observed that: "[e]ssentially, structural separation prevents the BOCs from using their existing substantial resources to provide enhanced services, requiring instead separation and/or duplication of facilities and personnel to provide both enhanced and basic services. It imposes direct monetary costs, and results in loss of efficiencies and economies of scope."[7]

Indeed, it is noteworthy that the Commission initially required the BOCs to establish and maintain fully separated affiliates as a condition of allowing them to offer enhanced services in the 1980's.[8] Subsequently, however, the Commission concluded that:

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[3] 47 U.S.C. § 272(b)(1).

[4] *See In the Matter of the Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996).

[5] *See* 47 C.F.R. § 53.203(b), (c).

[6] *See* 47 C.F.R. § 53.203(a); 47 U.S.C. § 272(b)(1), (c)(1).

[7] *See In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7575 ¶ 8 (1991) ("*Computer III Remand Order*").

[8] *See In the Matter of Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, Report and Order in Docket No. 83-115, 95 FCC 2d 1117, 1150 ¶ 80, 1151 ¶ 84 (1983), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), *modified on recon. sub nom., Bell Operating Companies Structural Separations*, Reconsideration Order, 56 Rad. Reg. 2d (P&F)

when compared to nonstructural safeguards, a structural separation requirement for BOC provision of enhanced services imposed significant costs on both the BOCs and the public. Those costs included decreased efficiency, innovation, and service availability caused in part by the requirement for BOC duplication of facilities and personnel as well as by limitations on joint marketing. The Commission found that, relative to nonstructural safeguards, the costs of structural separation outweighed the benefits.[9]

The Commission similarly should conclude in this proceeding that the costs of compliance with Section 272 separation requirements in an intensely competitive interLATA services marketplace unfairly place Qwest at an unjustified competitive disadvantage. Further, as Qwest previously has shown, the Commission has in place adequate nonstructural safeguards, both those in Section 272 that do not sunset as well as elsewhere in the Act, that buttress the conclusion that the costs of maintaining the Section 272 separation requirements plainly outweigh any perceived benefit.

A few brief examples may help to illustrate the unnecessary costs imposed on Qwest by the current rules. Both business and residential customers frequently prefer to have a single point of contact for their telecommunications services. Compliance with Section 272 and the Commission's rules preclude Qwest from offering this advantage to customers. For example, in-region enterprise customers that order services from Qwest's Section 272 affiliate that require a local loop from Qwest's operating company frequently are confused and frustrated because they must deal with two separate Qwest entities. In these arrangements, the Section 272 affiliate is the customer of record with Qwest's operating company, creating complex and cumbersome communications arrangements as well as delays in responding to customers' (*i.e.*, end users') needs.

Assume, for example, an enterprise customer of Qwest's Section 272 affiliate has offices throughout the country and a Qwest operating company technician visits an in-region office of that customer to install a new DS-3 special access channel termination. The BOC technician may answer questions about the BOC services provided by Qwest, but, due to the Section 272(c)(1) nondiscrimination obligations on information sharing, the technician can not answer questions about the services provided by the Qwest Section 272 affiliate. Instead, the technician must either: 1) tell the customer to call the Qwest Section 272 affiliate; or 2) relay the request to the operating company's wholesale organization, which then passes the request to the Section 272 affiliate's wholesale account team, which then passes the request to the appropriate Section 272 affiliate employees, who then contact the customer. In a commodity business, like long

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581 (1984), *aff'd sub nom. North American Telecommunications Ass'n v. FCC*, 772 F.2d 1282 (7^{th} Cir. 1985).

[9] *See Computer III Remand Order*, 6 FCC Rcd at 7614 ¶ 90.

distance telecommunications, this ineffective, disjointed customer service places Qwest at a distinct competitive disadvantage to rival providers that can offer the full array of telecommunications and information services on an integrated basis to business and residential customers.

In addition to preferring a single point of contact for their telecommunications requirements, enterprise and small business customers also prefer to obtain those services through a single, comprehensive agreement that covers all of their services. Section 272(a) requires a BOC to offer in-region originating interLATA services through a separate entity. Those separation requirements, thus, drive Qwest and the customer to have different contracts for the services obtained from the different Qwest operating subsidiaries. Moreover, Section 272(c)(1) prohibits Qwest from giving a customer a credit on BOC services based on the volume of services purchased from the Section 272 affiliates. Because these types of discount arrangements are very common in the telecommunications industry, Qwest is clearly at a disadvantage in competing against rivals that are able to offer such arrangements.

The negative impacts of Section 272 requirements are also evident in the regulatory hurdles that the BOC and the Section 272 affiliates must clear as part of Qwest's corporate efforts to jointly design and plan its business activities. Among other things these requirements hinder Qwest's deployment of promising services. This impacts, for example, Qwest's efforts to utilize Internet Protocol ("IP") delivered services such as VoIP and Internet Protocol Television ("IPTV") to its customers. It is very difficult and costly to plan and coordinate activities associated with such services given the complexity of the services, the involvement of both the Qwest local exchange carrier ("LEC") and Section 272 affiliates and the need to comply with the requirements of Section 272.

Qwest has structured planning and implementation to limit the information shared with both the BOC and Section 272 affiliates to ensure compliance with Section 272. For example, Qwest holds a bi-weekly New Technology Steering Committee meeting to review new technology proposals. In light of the nondiscrimination obligations and information sharing prohibitions in Section 272, Qwest leadership holds separate meetings with the BOC and its Section 272 affiliates to discuss new technology. Similarly, meetings at which both BOC and Section 272 affiliate employees are present are carefully managed, and no documents containing BOC information are distributed to or retained by any Section 272 affiliate employees attending the meetings and no documents containing Section 272 affiliate information are distributed to or retained by any BOC employees attending the meetings. All documents distributed both to employees of the BOC and Section 272 affiliates must be reviewed for Section 272 compliance to ensure that BOC and Section 272 affiliate information have been redacted and/or that the posting required by Section 272 occurs. These processes, while necessary to promote Section 272 compliance, are hardly conducive to a free exchange of information and ideas in an intensely competitive marketplace. Additionally, they add complexity to an already complicated undertaking and add inefficiencies to projects intended to increase efficiency.

The existence and maintenance of Section 272 affiliates causes Qwest to incur millions of dollars in costs each year that it would not incur if it were permitted to offer local and long distance services on an integrated basis through its operating company. For example, transactions between the operating company and Section 272 affiliates generate approximately $10 million in additional taxes and surcharges each year that would not be incurred if both services were provided by the operating company. Further, Qwest charges for local exchange service are subject to a three percent federal excise tax. If the operating company could offer both local and long distance services for a single price without regard to distance and without those services being separately stated on the bill, the bundled offering would be exempt from the excise tax.

Section 272 also requires Qwest to make space available in its buildings to unaffiliated carriers if Qwest offers such space to its Section 272 affiliate. Consequently, the latter must maintain their own network operations center, completely separate from the operating company's, which is plainly less efficient. This same requirement also dictates that the operating company should physically separate its employees from employees of Section 272 affiliates (*e.g.*, by maintaining separate copiers, printers and fax machines) to prevent inadvertent sharing of information.

The preceding comments largely reference the near term benefits from elimination of structural separation requirements. In the long run, the most significant benefit from eliminating separate subsidiary requirements would be the savings associated with Qwest's ability to fully integrate its local and long distance networks, as most competitors have already done. While integration would occur gradually over a number of years, the savings would allow Qwest to reduce its cost of providing interLATA services, many of which are very low margin services (*e.g.*, voice long distance). Qwest has not attempted to quantify the long term benefits of such integration since any estimate, at best, would have a very large margin of error. Furthermore, in order for Qwest to obtain the financial benefits of integration, it must first spend additional funds to develop and deploy next generation systems and facilities/equipment. That said, Qwest is of the opinion that it is self evident that the elimination of the separate subsidiary requirements would allow it to save significant amounts of capital over the next five to ten years and beyond as it transitions to a single integrated network.

In sum, the record in this proceeding clearly demonstrates that the interests of business and residential consumers in Qwest's 14-state region would be served by grant of the requested forbearance relief. Today, those consumers are not able to enjoy the benefits of a fully and fairly competitive marketplace for interLATA services because Qwest is forced to incur the costs of complying with Section 272 while its rivals do not. The Commission can and should eliminate this unwarranted competitive disparity by granting Qwest's request for forbearance relief.

Respectfully submitted,

/s/ Timothy M. Boucher

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