

May 2, 2008

Marlene H. Dortch
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: *Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996; Intercarrier Compensation for ISP-
Bound Traffic*, CC Docket Nos. 96-98 and 99-68

Dear Ms. Dortch:

On April 30, 2008, Melissa Newman and Lynn Starr of Qwest Communications International (“Qwest”), as well as the undersigned, met with Chris Moore, Legal Advisor to Commissioner Deborah Taylor Tate, to discuss the above-referenced matters. During this meeting, Qwest made two main points.

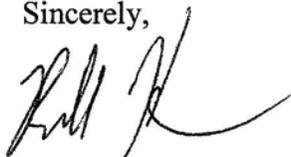
First, neither the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) nor any other court has rejected the legal rationale underlying the Commission’s 1999 *ISP-Bound Traffic Order* (FCC 99-38). That order concluded that ISP-bound traffic is not subject to the reciprocal compensation provisions found at sections 251(b)(5) and 252(d)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 251(b)(5), 252(d)(2), because such traffic is not “local.” This finding, however, was based entirely on the analysis applied by the Commission to determine whether a particular call is interstate or intrastate, not whether the traffic was local for purposes of reciprocal compensation. In *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), the court vacated and remanded the *ISP-Bound Traffic Order*, seeking further explanation of why the jurisdictional nature of the traffic was determinative as to the application of reciprocal compensation charges. Subsequently, the Commission abandoned this rationale in favor of an alternative approach. The D.C. Circuit rejected the new rationale, but declined to vacate the relevant rules, expressly noting the “likelihood” that the Commission would be able to supply a defensible justification its policy framework. In short, while *Bell Atlantic* sought further explanation of the *ISP-Bound Traffic Order*’s rationale, neither that decision nor the subsequent decision expressed any doubt that this rationale *could* be supported.

WILKINSON) BARKER) KNAUER) LLP
Marlene H. Dortch
May 2, 2008
Page 2

Second, the Commission can readily answer the questions posed by the D.C. Circuit in *Bell Atlantic*. Long-standing Commission precedent holds that reciprocal compensation payments “apply only to traffic that originates and terminates within a local area.” *Local Competition Order* ¶ 1034 (FCC 96-325). An Internet communication does not comprise two separate offerings – one connecting the user to the ISP and another connecting the ISP to the Internet – but rather *one continuous communication*. This conclusion has been further confirmed by the Commission’s recent decisions regarding the classification of broadband Internet access (affirmed by the Supreme Court) and of enhanced calling-card services (affirmed by the D.C. Circuit). Because the telecommunications involved do not terminate at the ISP, ISP-bound communications do not “originate[] and terminate[] within a local area.” They therefore are not subject to the Act’s reciprocal compensation provisions.

Please contact the undersigned at the number listed above with any questions.

Sincerely,



Russell P. Hanser

Counsel to Qwest Communications
International, Inc.

cc (via electronic mail):

Chris Moore