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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S COMPLIANCE
WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

QWEST'S NOTICE OF SUPPLEMENTAL CITATION OF AUTHORITY

Qwest Corporation ("Qwest") hereby files notice of supplemental citation of authority regarding AT&T's Motion to Reopen and Supplement the Record concerning 272 issues. On October 24, 2002, the Minnesota Public Utilities Commission held oral argument on AT&T's similar motion filed in Minnesota. The Minnesota Commission unanimously denied AT&T's motion. AT&T filed essentially the same motion in all fourteen Qwest states. Eleven states denied AT&T's motion; no state has granted it.

RESPECTFULLY SUBMITTED this 24th day of October, 2002.

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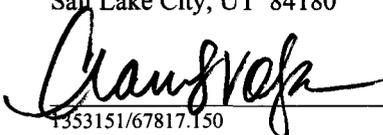
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2. Checklist Items

Staff states that Checklist Item 2 may be impacted by the unfiled agreements. *Id.* It believes that this concern can be eliminated prospectively by Qwest filing the unfiled agreements identified in the Staff Report. However, Qwest has not filed all the agreements with the Commission yet. Until it does, no finding of nondiscrimination can be made in the section 271 case. Disagreements remain over whether Staff's list of agreements is sufficient or covers all relevant unfiled agreements. Until a decision is rendered in the section 252(e) case identifying all the agreements that must be filed pursuant to section 252(e), discrimination continues, precluding any finding in the section 271 case that Qwest meets Checklist Item 2.

AT&T recently became aware that Qwest has made several data bases available to certain CLECs in Minnesota. The data bases were initially made available pursuant to an unfiled agreement. AT&T has continuously raised the issue of whether it was receiving access to all data bases for loop qualification. Qwest maintained that all access was being provided. However, hearings in the section 271 proceeding in Minnesota made it quite clear that AT&T was not getting access to all the data bases Qwest used for determining availability of facilities. Therefore, Checklist Item 4 is also impacted by the unfiled agreements. AT&T intends to raise this issue in supplemental comments in Arizona.

A major omission by Staff in its reports is its failure to address whether there has been discrimination by Qwest as a result of the unfiled agreements. This is a critical obligation that is contained in the provisions of the Act and the Federal Communications Commission's rules and orders; however, Staff does not address the issue at all, other than to suggest discrimination will be eliminated prospectively by Qwest filing Staff's list of

agreements. AT&T assumes that Staff has left it to the CLECs to prove what, if any, discrimination exists or existed. However, as noted earlier, until all the relevant agreements are filed, no finding can be made that prospectively discrimination has been eliminated.

AT&T recognizes that Staff suggests that non-monetary damages and monetary damages will be addressed in the section 252(e) case. However, assuming that a finding of discrimination is made, if the section 271 proceeding has been completed, there will be no way to raise the discrimination finding in the section 271 proceeding.

AT&T believes, contrary to Staff's arguments, that its recommendations do not adequately resolve the discrimination issues in the context of the section 271 proceeding.

3. The Commission Should Not Make a Recommendation in the Section 271 Proceeding Until the Section 252(e) Case is Completed.

There are two proceedings that are impacted by the unfiled agreements because Staff chose to create a separate proceeding to address the issue of whether any of the unfiled agreements needed to be filed pursuant to section 252(e). AT&T raised concerns about initiating a separate 252(e) proceeding. AT&T obtained a number of safeguards in response to Staff's proposal. AT&T obtained an Administrative Law Judge ruling that it could use the evidence, record and findings from the section 252(e) proceeding in the section 271 proceeding. The Protective Order in the section 252(e) proceeding also permits the parties to use confidential information obtained in the section 252(e) proceeding in the section 271 proceeding. The safeguards were obtained by AT&T as a direct result of Staff's proposal to create a separate proceeding. Those safeguards are undermined if the section 271 proceeding proceeds independently and is completed before the section 252(e) case is finished.

Staff argues that “[i]t is simply not necessary to duplicate the 252(e) facts or the record in the public interest portion” of the section 271 proceeding. In fact, that is exactly what will happen under Staff’s proposal – duplication. That is what AT&T sought to avoid by obtaining the safeguards in the Procedural Order and Protective Order. Staff must assume that the comments parties would be permitted to file in the section 271 proceeding do not need to be as extensive as the comments and testimony in the section 252(e) proceeding. AT&T does not agree with this assumption. If the Commission is asked to recommend that Qwest’s entry into the in-region, interLATA long distance market be denied based on comments filed by the parties, the evidence must be sufficient for the Commission to do so. In economic terms, preventing Qwest from entering the in-region, interLATA long distance market will greatly exceed any fines the Commission may impose in the section 252(e) case.

Under Staff’s proposal, the Commission may be forced to decide if it is in the public interest to allow Qwest in the in-region, interLATA market before it sets monetary and non-monetary penalties. This decision may prejudice the Commission’s ability to make findings and recommend penalties in the section 252(e) case.

As noted in earlier comments by AT&T, Staff has not reviewed nor made any findings on the contents of the oral agreements between Qwest and Eschelon and Qwest and McLeod. Until the Commission makes findings and conclusions regarding the substance of these agreements, it is very difficult for the CLECs to argue the terms of these agreements should prevent Qwest from obtaining in-region, interLATA long distance

authority. Until an order is entered by the Commission, Qwest need only respond that AT&T's arguments are mere allegations.¹

Staff has not provided any reasons why the two dockets should proceed independently, other than it believes it has covered all the procedural bases. The CLECs and RUCO will be prejudiced if they have to litigate the issue in two separate proceedings. The Commission should be mindful that the hard procedural decisions the Commission must now make are of Qwest's own making.

But for the unfiled agreements, the Commission would not have to determine monetary and non-monetary damages, the effects the unfiled agreements had on the section 271 process, whether CLECs were discriminated against, or whether Qwest should be held in contempt of process. All of these issues are a result of Qwest's decision not to file agreements with the Commission pursuant to section 252(e). AT&T believes it is only appropriate to hold the section 271 proceeding in abeyance until the issues are all sorted out. To require the CLECs and RUCO to duplicate efforts is prejudicial to them. They should not be prejudiced because of the unlawful conduct of Qwest.

¹ The parties previously raised a number of issues in the public interest portion of the proceeding that they believe should preclude Qwest from obtaining a favorable recommendation. Staff dismissed these matters as mere allegations. Therefore, AT&T's concerns are real.

Dated this 11th day of October, 2002.

**AT&T COMMUNICATION OF THE
MOUNTAIN STATES, INC. AND
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