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

) **DOCKET NO. T-00000A-97-0238**
)
) **AT&T'S FILING TO**
) **SUPPLEMENT THE RECORD**
) **IN THE PUBLIC INTEREST**
)

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") hereby supplement the record in the public interest.

On August 12, 2002, AT&T filed a Motion For Stay of Proceeding or, in the Alternative to Reopen the Record Regarding the Public Interest. AT&T alleged that Qwest is unlawfully providing in-region, interLATA services through its indefeasible rights of use agreements or lit capacity agreements ("IRUs"). Some of the agreements involved Touch America. Touch America currently has two complaints pending at the Federal Communications Commission ("FCC").

By a Procedural Order dated September 27, 2002, the Administrative Law Judge denied AT&T's Motion without prejudice. The Procedural Order, however, states that the Commission "invite[s] any party to the proceeding to supplement the record on issues raised in AT&T's Motion." Procedural Order at 3. Staff was also instructed to "consider and analyze the events occurring after it filed its Preliminary Report and include updated findings and recommendations in its Final Report on Public Interest." *Id.* at 4.

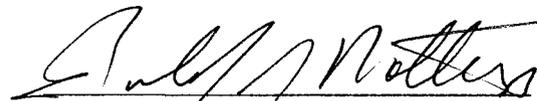
On December 3, 2002, Qwest filed an *ex parte* with the FCC in WC Docket No. 02-314, Qwest's on-going section 271 proceeding, "to update the record on an issue raised previously by Touch America, Inc. in Qwest 271 dockets." AT&T is filing this *ex parte* in this proceeding to update the record. *See* Attachment A.

On December 3, 2002, Qwest filed another *ex parte* in WC Docket No. 02-314. This *ex parte* states that Qwest, in advance of an audit required as part of the merger conditions, determined that it was providing in-region, interLATA services and had several in-region, interLATA dark fiber leases. *See* Attachment B.

The issues raised by the two *ex partes* are related to the issues raised by AT&T in its Motion. Accordingly, based on the language contained in the Procedural Order dated September 27, 2002, AT&T hereby supplements the record in the public interest.

Dated this 6th day of December, 2002.

**AT&T COMMUNICATIONS OF
THE MOUNTAIN STATES, INC.
AND TCG PHOENIX**



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Dan L. Poole
Vice President - Regulatory Law

December 3, 2002

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

Re: Ex Parte Statement
WC Docket No. 02-314
Application of Qwest Communications International Inc. to Provide In-Region InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming

Dear Ms. Dortch:

This letter is to update the record on an issue raised previously by Touch America, Inc. in the Qwest 271 dockets. Specifically, from time to time Touch America has made allegations here regarding its dissatisfaction with the performance of Qwest under commercial contracts between the companies related to Qwest's divestiture of its in-region interLATA operations. Touch America has simply restated in summary fashion claims it has presented in a pending complaint. In that complaint Touch America has argued that its commercial disputes present violations of the Commission's order approving the merger of Qwest and U S WEST, and of Section 271. See File No. EB-02-MD-004.

Qwest is vigorously contesting Touch America's interpretation of the facts, and its attempt to convert commercial disputes into Communications Act issues. Indeed, Touch America's FCC complaint itself overlaps with a previously-pending arbitration between the parties over various commercial matters arising from the divestiture. In that proceeding Qwest is seeking over \$100 million for unpaid services and related claims. Touch America is asserting its own claims as well as various defenses. The arbitration hearing has been completed and a decision is expected shortly.

As Qwest has previously stated, the commercial disputes between itself and Touch America are not relevant to the openness of its local exchange market or other factors considered under Section 271. However, because Touch America has alleged that its various complaints regarding Qwest implicate Section 271, Qwest is filing this ex parte letter that incorporates information provided today in the restricted docket covering Touch America's pending

Marlene H. Dortch
Federal Communications Commission
December 3, 2002
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complaint.¹ That information updates the complaint docket with respect to a development in the related arbitration proceeding. The information filed in the restricted complaint proceeding is provided here verbatim in the accompanying attachment.

Qwest will continue to address Touch America's commercial claims in the context of the arbitration proceeding and the pending complaint docket. If anything, the attachment here further demonstrates that the disputes between the parties do not belong in a Section 271 proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dan L. Poole". The signature is written in black ink and is positioned below the typed name.

Daniel L. Poole

¹ Because the information contains no proprietary information of Touch America, and in the interest of completeness, Qwest is providing the information here as it is provided in the formal complaint proceeding. This is not a waiver of any rights or duties of the parties in that restricted docket.

Attachment

*[Full Text of Letter Filed by Qwest Communications International Inc. in
File No. EB-02-MD-004 on December 3, 2002]*

As you may know, Qwest management is taking a fresh look at various older disputes facing the company, and is looking for ways to eliminate issues and controversy. This philosophy is reflected in our approach to matters across the board.

In this connection, Qwest has recently decided to discontinue disputing one of Touch America's claims in the pending arbitration of business issues between the companies. Because the arbitration overlaps with Touch America's above-referenced complaint, we are bringing this matter to your attention.

Specifically, one of the many arbitration issues relates to billing of certain charges to Touch America for out-of-region wholesale services. It has been Touch America's position that it should not be charged for certain such services it received from Qwest because it had no need for the services given the optical capacity facilities it acquired from Qwest separately under an IRU Agreement covering both in-region and out-of-region facilities. (The Commission previously has been provided with a copy of this Agreement.)

The parties entered into this IRU Agreement to make certain that, as of Qwest's merger with U S WEST, Inc., Qwest would not be carrying any in-region interLATA traffic on its network. As of late June 2000, transfer of the majority of in-region dedicated services to Touch America facilities had been accomplished pursuant to the divestiture implementation plan developed by the parties.¹ However, at that time Touch America had not completed arrangements for network facilities of its own in certain locations sufficient to handle specific dedicated services that were to be transferred at divestiture. It also was anticipated that certain services might not be able to be moved to existing Touch America facilities prior to the planned June 30 closing.

Accordingly, the parties agreed that Qwest would sell Touch America IRUs in lit optical capacity at the OC-3 level or greater that would include in place the specific facilities capacity that Qwest had been using to provide any remaining dedicated services. This capacity was sold under Qwest's then-standard IRU agreement, which conveyed the capacity to Touch America for the capacity's estimated useful life. The result was that Qwest and Touch America were able to complete the divestiture on June 30 as scheduled in compliance with Section 271.²

¹ This matter did not relate to divestiture of switched services, which were handled in an entirely different manner.

² Touch America's current position is that this IRU Agreement for optical capacity is not a violation of Section 271 because it was entered into prior to the merger of Qwest and U S WEST. (Obviously Qwest and Touch America have different points of view regarding the general question of whether optical capacity IRUs are facilities that are not covered by Section 271. This matter is before the Enforcement Bureau in EB-02-MD-003.)

As noted above, in the pending arbitration Touch America argued that, given the IRU capacity it had purchased, Qwest should not be billing it for certain out-of-region wholesale services. This week Qwest decided not to contest this position, removing one of the issues in the arbitration.

In connection with its review of this matter, Qwest has identified post-June 30, 2000 record-keeping and administrative deficiencies with respect to the IRUs acquired by Touch America at the time. This review has been hampered by the fact that many of the employees involved in this matter no longer are with the company. However, it appears that Qwest personnel did not update system records to reflect that the specific capacity identified in the IRU Agreement had been conveyed to Touch America as IRUs. In some instances it appears that Qwest (acting as Touch America's agent and in accordance with Qwest/TA network implementation plans) moved services from the Touch America IRU capacity to other Touch America facilities, or canceled or disconnected services on the Touch America IRU capacity at that company's request, without maintaining correct records for the original capacity and subsequently re-using the equipment and facilities associated with the IRU capacity for permitted purposes. Record-keeping problems also appear to have led Qwest in at least some cases to supply Touch America with more IRU capacity than was called for in the IRU Agreement.

At this time Qwest has no reason to believe that these matters impact other disputed issues in the arbitration or this complaint process. For example, Touch America has made general allegations that somehow the June 30 divestiture was not complete with respect to interLATA services provided to customers. However, these matters do not relate to customers; indeed, the purpose of the IRU Agreement was to ensure that Touch America had more than enough capacity to handle the customer business it was assuming. Nor do these matters relate to other allegations that Touch America has made in this docket.

Many other claims remain pending in the arbitration. Post-hearing briefing is in progress, and a decision from the arbitrator is expected relatively soon thereafter. Qwest will advise the Commission when the arbitrator has issued his decision. We hope that on or before that time our pending Motion to Dismiss will be granted.



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Sharon J. Devine
Associate General Counsel

December 3, 2002

Mr. Anthony Dale
Investigations and Hearings Division
Enforcement Bureau

Ms. Michelle Carey
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Subject: *Application of Qwest Communications Inc. and U S WEST, Inc., CC*
Docket No. 99-272

*Qwest Communications International, Inc., Consolidated Application for
Authority to Provide In-Region, InterLATA Services in Colorado, Idaho,
Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming.*
WC Docket No. 02-314

Dear Mr. Dale and Ms. Carey:

As you know, as a follow-up to the Qwest/U S WEST merger, Qwest is required to engage an independent auditor on an annual basis to review its compliance with the merger conditions and with Section 271. Two such compliance audits have been conducted and completed by the independent auditors. The third is scheduled to be completed in March 2003.

In advance of the audit, Qwest on its own recently investigated certain matters relating to its compliance with these requirements. We wish to bring to the Commission's attention two matters we have discovered that are relevant to the compliance audit process. We are also submitting this letter to be placed in the record of Qwest's Section 271 application proceeding so that there will be no doubt that our disclosure obligations have been met in full.

The first matter is a March 2002 agreement with Cable & Wireless Plc covering more than 120 private line services around the country, which are identified on an attachment to that agreement. Our internal investigation has revealed that four of the listed private lines are in-region interLATA services -- on which Qwest has not received and will not receive any payments from Cable & Wireless. Qwest's policy in this regard is clear: marketing and provisioning of in-region interLATA services are prohibited. Thus, Qwest has informed Cable & Wireless that it must terminate these four private lines at the earliest possible date. We plan to

do so no later than December 9, 2002, which we believe provides Cable & Wireless the minimum notice needed to avoid customer disruption.

We are not aware of any other such circumstances.

Second, Qwest has identified two leases of in-region interLATA dark fiber that Qwest did not divest prior to consummation of the merger. As you may recall, Qwest's view is that dark fiber cable is a facility, not "telecommunications" as defined in the 1996 Act, and therefore that the lease of dark fiber does not implicate Section 271. However, Qwest also recognized that Commission dicta could be read otherwise. Rather than contest the point, Qwest committed to discontinue such leases at the time of the merger.

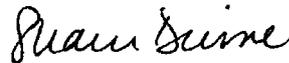
Qwest has identified two dark fiber leases entered into before the merger that continued after the merger closed. Qwest now has terminated both leases, sold the dark fiber to the customer, and entered into a standard agreement to maintain the fiber. Qwest also credited the customer for all amounts paid under the lease since the date of the merger, plus interest.

One lease, dated April 30, 1999, was to MEANS, Inc., a competitive carrier now known as Onvoy, Inc. Under the lease, Qwest provided Onvoy with dark fiber from Owatanna, Minnesota to Minneapolis, Minnesota. Onvoy installed its own electronics and related equipment in order to light the fiber and connected the fiber to other elements of its network. At the end of the two-year term, Onvoy continued to light and use the fiber and make lease payments to Qwest. The second lease, dated March 16, 2000, was to Timing Solutions Corporation ("TSC"), a systems integrator. Under the lease Qwest provided TSC dark fiber between Phoenix and Tucson in connection with a federal government contract. TSC accepted the fiber in September 2000, after the Qwest-U S WEST merger closed. At the end of the initial six-month lease period TSC requested and Qwest approved an extension. As noted above, the leases are no longer in effect.

Qwest is not aware of any other in-region interLATA dark fiber leases in effect since the merger was consummated.

Please contact me if you have any questions.

Sincerely yours,



Sharon Devine

CERTIFICATE OF SERVICE

I certify that the original and 13 copies of AT&T's Filing to Supplement the Record in the Public Interest in Docket No. T-00000A-97-0238 were sent by overnight delivery on December 6, 2002 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on December 6, 2002 to:

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