K-1

1603-010

DOCKET NO. 1603-010

In the Matter of IN THE MATTER OF A SUBJECT TO RULE OF EVIDENCE 408, CONFIDENTIAL AMENDMENT TO CONFIDENTIAL BILLING SETTLEMENT AGREEMENT BETWEEN QWEST CORPORATION AND MCLEODUSA INCORPORATED

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
1/10 03	Filed and Docketed;
1/16 03	Weekly Filing;
2/6 03	AT+T Comments;
2/25 03	Response of Qwest;
6/26 03	Order Finding Filing not Mandatory;
6/26 03	Docket Closed.

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SMEAD 62 SP14130

CONFIDENTIAL

#1

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of January 9, 2003 through January 15, 2003

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705

CONSUMER COMPLAINTS

CN03-001 In the Matter of the Complaint filed by Veda J. Boxwell, Sioux Falls, South Dakota, against MidAmerican Energy Company Regarding Billing.

Complainant states that after selling her property at 1000 N. Minnesota, she contacted MidAmerican and asked that it remove her name from the billing at this address and to inquire about what her final bill would be. In January 2003, Complainant requested that MidAmerican put her name on the billing address at 3316 N. 9th Ave. MidAmerican told her that it could not put her name on the account because she had service in her name at 1000 N. Minnesota and had an outstanding bill of $240.00. Complainant requests that service be removed from her name at 1000 N. Minnesota, effective January 15, 2002, that the outstanding bill at this address be removed from her name and that she be allowed service in her name at 3316 N. 9th Ave., effective immediately.

Staff Analyst: Mary Healy
Staff Attorney: Karen Cremer
Date Docketed: 01/10/03
Intervention Deadline: N/A

CT03-001 In the Matter of the Complaint filed by Berdell Kinsley, Springfield, South Dakota, against BroadWing Telecommunications, Inc. Regarding Unauthorized Switching of Services.

Complainant states that his service was switched without his authorization. Complainant requests a payment of $800.00 for the unauthorized switch and reimbursement of expenses to attend a hearing.

Staff Analyst: Mary Healy
Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Intervention Deadline: N/A

ELECTRIC

EL03-002 In the Matter of the Filing by Otter Tail Power Company for Approval of a Contract with Deviations with the City of DeSmet.

Application by Otter Tail Power Company for approval of a contract with deviations with the City of DeSmet. The current municipal contract providing electrical service expires February 1, 2003. The new contract contains rates that are not otherwise tariffed.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 01/14/03
Intervention Deadline: 01/24/03

NATURAL GAS

NG03-001 **In the Matter of the Filing by MidAmerican Energy Company for Approval of its 2002 Economic Development Report and its 2003 Economic Development Plan.**

Application by MidAmerican Energy Company for approval of its 2002 Economic Development Report and 2003 Economic Development Plan in accordance with the Settlement Stipulation in Docket NG01-010. The Settlement Stipulation specifies that economic development expenses up to $100,000 shall be equally paid by ratepayers ($50,000) and shareholders ($50,000) and that MidAmerican's programs will be submitted for approval on an annual basis.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 01/15/03
Intervention Deadline: 01/31/03

TELECOMMUNICATIONS

TC03-002 **In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and Advanced Telecom Group, Inc.**

TC03-003 **In the Matter of an Agreement between U S WEST Communications, Inc., Qwest Communications International, Inc. and AT&T Corporation, AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of the Pacific Northwest, Inc. and AT&T Broadband Services, Inc. dba AT&T Cable Services and Teleport Communications Group, Inc. dba AT&T Local Services.**

TC03-004 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation and Black Hills FiberCom, L.L.C.**

TC03-005 **In the Matter of a Confidential Settlement Document in Letter Format between U S WEST, Inc. and McLeodUSA.**

TC03-006 **In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.**

TC03-007 **In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA Telecommunications Services, Inc.**

TC03-008 **In the Matter of a Letter Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-009 **In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.**

TC03-010 **In the Matter of a Subject to Rule of Evidence 408, Confidential Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-011 **In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.**

TC03-012 **In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.**

TC03-013 **In the Matter of a Subject to Rule of Evidence 408, Confidential Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-014 **In the Matter of a Subject to Rule of Evidence 408, Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.**

TC03-015 **In the Matter of a Confidential Agreement to Provide Directory Assistance Database Entry Services between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

TC03-016 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation, successor to U S WEST Communications, Inc., and McLeodUSA Telecommunications Services, Inc.**

TC03-017 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Communications Corporation and McLeodUSA Telecommunications Services, Inc.**

TC03-018 **In the Matter of a Memorandum of Understanding between Qwest Corporation and Z-Tel Communications, Inc.**

The above 17 Agreements were filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether these Agreements were a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, these dockets were opened for the purpose of receiving a Commission ruling on whether these Agreements should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. Qwest has requested confidential treatment of the contents of these Agreements pursuant to ARSD chapter 20:10:01. Any party wishing to comment on these Agreements may do so by filing written comments with the Commission and the parties to these Agreements no later than February 5, 2003. Parties to these Agreements may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Initial Comments Due: 02/05/03

TC03-019 **In the Matter of a U S WEST Service Level Agreement with Covad Communications Company Unbundled Loop Services between U S WEST Network Complex Services and Covad Communications Company.**

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the

mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According to the Agreement, Qwest f/k/a U S WEST, agreed to make demonstrable improvements to its provisioning service performance on unbundled loops, in order to reach service quality standards as set forth in the Agreement. Covad agreed to withdraw its opposition to the U S WEST/Qwest merger in return. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 5, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Initial Comments Due: 02/05/03

TC03-020 In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According to the Agreement, in consideration for McLeodUSA's withdrawal from the dockets related to the U S WEST/Qwest merger, Qwest f/k/a U S WEST agreed to pay McLeodUSA a fixed sum for the settlement of disputes involving nonblocked Centrex service, subscriber list information and miscellaneous billing disputes. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 5, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Initial Comments Due: 02/05/03

TC03-021 In the Matter of a Confidential Agreement in Letter Format between Qwest Communications International, Inc. and McLeodUSA Incorporated.

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According the Agreement, the parties agreed to (1) develop an implementation plan by which the parties agree to implement their interconnection agreements, (2) arrange quarterly meetings to address unresolved and/or anticipated business issues, and (3) establish and follow escalation procedures to facilitate and expedite business-to-business dispute resolutions as set forth in the Agreement. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 5, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Initial Comments Due: 02/05/03

TC03-022 **In the Matter of the Filing by NOS Communications, Inc. for Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company Specific Cost-Based Switched Access Rates.**

On January 10, 2003, NOS Communications, Inc. filed a request for approval of switched access rates with consideration of ARSD 20:10:27:07 being waived. The Applicant has also requested a waiver of ARSD 20:10:27:12. NOS Communications, Inc. intends to mirror the switched access tariffed rates of Qwest.

Staff Analyst: Keith Senger
Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Intervention Deadline: 01/31/03

TC03-023 **In the Matter of the Filing for Approval of a Boundary Change between Valley Telecommunications Cooperative Association, Inc. and Venture Communications Cooperative.**

Valley Telecommunications and Venture Communications have filed a joint petition proposing changes to several exchange boundaries. The proposed exchange boundaries affect the following exchanges: Glenham/Selby, Mound City/Selby, Eureka/Selby, Hosmer/Bowdle, Ipswich/Roscoe.

Staff Analyst: Michele M Farris
Staff Attorney: Karen Cremer
Date Docketed: 01/13/03
Intervention Deadline: 01/31/03

TC03-024 **In the Matter of the Filing for Approval of a Line Information Data Base Storage Agreement between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.**

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Line Information Data Base Storage Agreement between U S WEST (now Qwest) and Black Hills FiberCom, L.L.C. According to the parties, the agreement is a negotiated agreement which sets forth the terms, conditions, and prices under which U S WEST agreed to offer and provide to any requesting CLEC network interconnection, access to unbundled network elements, ancillary services and telecommunications services available for resale within the geographical areas in which U S WEST was providing local exchange services at that time and for which U S WEST was the incumbent local exchange carrier within the state of South Dakota for purposes of providing local telecommunications services. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-025 **In the Matter of the Filing for Approval of a Common Channel Signaling Network Interconnection Agreement Switched Access Services between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.**

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The agreement is a 1999 Common Channel Signaling Network Interconnection Agreement Switched Access Services. According to the parties, the agreement is a negotiated agreement which describes the terms and conditions under which the parties agree to permit their customers to use line number telephone calling cards to initiate calls and also to permit their customers to bill calls to accounts associated with cards, collect, bill to third number and public telephone check for the specific number. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-026 In the Matter of the Filing for Approval of an Internetwork Calling Name Delivery Service Agreement (ICNAM Service) between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Internetwork Calling Name Delivery Service Agreement ("ICNAM Service") which provides the terms and conditions under which U S WEST (now Qwest) will provide ICNAM services to BHFC, thereby transporting Calling Name data between the parties' databases. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-027 In the Matter of the Filing for Approval of a Custom Local Area Signaling Services (CLASS) Network Interconnection Agreement between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Custom Local Area Signaling Services ("CLASS") Network interconnection Agreement which describes the terms and conditions under which the parties agreed to provide each other access to interconnect their respective networks for the provision of intraLATA CLASS in compliance with the Common Channel Signaling Network ("CCSN") Interconnection Agreement for switched access services. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-028 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC) between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation (Qwest) and McLeodUSA Telecom Development, Inc. (McLeodUSA) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2001 Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireless network usage data under terms that will protect the confidential and proprietary nature of such information. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-029 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC) between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and McLeodUSA Telecom Development, Inc. (McLeodUSA) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2001 Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-030 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC) between Qwest Corporation and Midcontinent Communications, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and MidContinent Communications for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2002 Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to

obtain from the other certain technical and business information related to wireless network usage data under terms that will protect the confidential and proprietary nature of such information. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-031 In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC) between Qwest Corporation and Midcontinent Communications, Inc.

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and MidContinent Communications) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2002 Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 3, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Initial Comments Due: 02/03/03

TC03-032 In the Matter of the Application of Alticomm, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota.

Alticomm, Inc. is seeking a Certificate of Authority to provide interexchange and local exchange telecommunication services in South Dakota. The applicant intends to provide a full range of services on a resale basis.

Staff Analyst: Keith Senger
Staff Attorney: Kelly Frazier
Date Docketed: 01/14/03
Intervention Deadline: 01/31/03

TC03-033 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and FiberComm, L.C.

On January 15, 2003, the Commission received for approval a filing of an Amendment to an Interconnection Agreement between Qwest Corporation (Qwest) and FiberComm, L.C. (FiberComm). According to the parties, the Amendment is a negotiated amendment to the Agreement between the parties approved by the Commission in Docket TC01-020 which became effective July 12, 2001. The Amendment is made in order to add terms and conditions for the Special Request Process as set forth in Exhibit B attached to the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 4, 2003. Parties to the agreement may file written responses to the comments no later than twenty days

after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 01/15/03
Initial Comments Due: 02/04/03

TC03-034 In the Matter of the Application of Business Network Long Distance, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

Business Network Long Distance, Inc. has filed an application with the South Dakota Public Utilities Commisison for a Certificate of Authority to provide interexchange services in South Dakota. The applicant intends to provide resold interexchange services, including 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services, and travel card services throughout South Dakota.

Staff Analyst: Michele M. Farris
Staff Attorney: Karen Cremer
Date Docketed: 01/15/03
Intervention Deadline: 01/31/03

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February 6, 2003

Via Facsimile and Overnight Mail

Debra Elofson
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: Qwest Corporation's Confidential Agreements
Docket Nos. TC03-002 – TC03-021

Dear Ms. Elofson:

AT&T welcomes the opportunity to comment on these dockets. AT&T notes that because the "deals" at issue are indeed secret (thus the reason for the opening of these dockets), AT&T has no idea of what is contained and thus finds it difficult to comment on whether the deals are of the type that should cause concern to the South Dakota Public Utilities Commission. Accordingly, only the Commission staff who have reviewed the agreements can bring these matters to the South Dakota Public Utilities Commission for a determination of whether such provisions favor one competitor over the other in violation of both South Dakota law and the Telecommunications Act of 1996. Of course, as a national CLEC with a South Dakota presence, AT&T is interested in making sure that both the South Dakota staff and the Public Utilities Commission complete their duties to assure that competition is realized in South Dakota.

AT&T notes that this approach is analogous to the approach utilized in Minnesota. The Minnesota Department of Commerce (akin to Commission adversarial staff), after conducting the same type of investigation as South Dakota Commission staff, prosecuted a case against Qwest for providing "sweetheart deals" to certain CLECs in violation of both Minnesota state law and the Telecommunications Act of 1996. The Department of Commerce (and the citizens of the state of Minnesota) prevailed, as on February 4, 2003, Qwest was ordered to provide restitution to the CLECs that were not given the "sweetheart

deals" for twenty-four months. Qwest was also fined upwards of twenty-two million dollars (with such amount to be stayed if restitution is fully paid).

In sum, this Commission can re-level the playing field and encourage competition in South Dakota by providing the appropriate remedy, if and only if it finds there were "sweetheart deals" given to competitors that were against South Dakota and federal law. As one can see through the Minnesota experience, the Commission can only attempt to level the playing fields if Commission staff and the Commission work assiduously to determine if these deals do exist in South Dakota and, if appropriate, craft a proper remedy. Otherwise, the Commission and its prosecuting body can stand mute and simply hope, with blinders on, that there is no effect on competition in its state. AT&T suggests that if the Commission elects the latter approach, it is effectively condoning Qwest's behavior as well as harming competitors. As such, AT&T hopes that this Commission and its Staff decide to pursue this matter.

Sincerely,

Steven H. Weigler/JB

Steven H. Weigler

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and Advanced Telecom Group, Inc.	Docket No. TC03-002
In the Matter of an Agreement between U S WEST Communications, Inc., Qwest Communications International, Inc. and AT&T Corporation, AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of the Pacific Northwest, Inc. and AT&T Broadband Services, Inc. dba AT&T Cable Services and Teleport Communications Group, Inc. dba AT&T Local Services.	Docket No. TC03-003
In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation and Black Hills FiberCom, L.L.C.	Docket No. TC03-004
In the Matter of a Confidential Settlement Document in Letter Format between U S WEST, Inc. and McLeodUSA.	Docket No. TC03-005
In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.	Docket No. TC03-006
In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA Telecommunications Services, Inc.	Docket No. TC03-007
In the Matter of a Letter Agreement between Qwest Corporation and McLeodUSA Incorporated.	Docket No. TC03-008
In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.	Docket No. TC03-009
In the Matter of a Subject to Rule of Evidence 408, Confidential Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA Incorporated.	Docket No. TC03-010
In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.	Docket No. TC03-011

In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.	Docket No. TC03-012
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In the Matter of a Subject to Rule of Evidence 408, Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.	Docket No. TC03-014
In the Matter of a Confidential Agreement to Provide Directory Assistance Database Entry Services between Qwest Corporation and McLeodUSA Telecom Development, Inc.	Docket No. TC03-015
In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation, successor to U S WEST Communications, Inc., and McLeodUSA Telecommunications Services, Inc.	Docket No. TC03-016
In the Matter of a Confidential Billing Settlement Agreement between Qwest Communications Corporation and McLeodUSA Telecommunications Services, Inc.	Docket No. TC03-017
In the Matter of a Memorandum of Understanding between Qwest Corporation and Z-Tel Communications, Inc.	Docket No. TC03-018
In the Matter of a U S WEST Service Level Agreement with Covad Communications Company Unbundled Loop Services between U S WEST Network Complex Services and Covad Communications Company.	Docket No. TC03-019
In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.	Docket No. TC03-020
In the Matter of a Confidential Agreement in Letter Format between Qwest Communications International, Inc. and McLeodUSA Incorporated.	Docket No. TC03-021

RESPONSE OF QWEST CORPORATION

Qwest Corporation ("Qwest") submits the following response in these dockets pursuant to the Commission's order in the docketing statement dated January 10, 2003.

INTRODUCTION

On January 10 2003, the Commission opened these dockets for the stated purpose of determining whether certain agreements, which Qwest filed in June 2002 as part of the Commission's Investigation into Qwest's Compliance with Section 271, should have been filed with the Commission earlier under Section 252. The Commission directed any interested party to file comments by February 5. Any party could have obtained copies of the Agreements under the terms of the confidentiality order in place in the section 271 proceedings. None apparently did so. Any party could have filed comments. But no party, and specifically no South Dakota competitive local exchange carrier ("CLEC"), filed any substantive comments.[1]

In light of the lack of any real interest in these dockets and Qwest's substantial, remedial, and proactive efforts to resolve past and future issues regarding filings under Section 252, Qwest believes there is no active controversy or dispute for the Commission to pursue, and that the dockets should be closed without further proceedings.[2]

QWEST IS PROACTIVELY COMPLYING WITH ALL FILING REQUIREMENTS.

Since this issue arose in other states in the Spring of 2002, Qwest demonstrably has taken firm measures to implement a broad standard for filing agreements. First, in April 2002, Qwest submitted a petition for a declaratory ruling from the FCC, requesting an official pronouncement

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[1] One day after the deadline set by the Commission, AT&T filed but did not serve a letter articulating broad, generalized concerns. AT&T's letter did not, however, address the issue framed by the Commission – whether the Agreements should have been filed earlier.

[2] The Commission indirectly addressed these issues in the section 271 proceedings. In its November 22, 2002 Order Regarding the Public Interest, the Commission found that "Qwest's past conduct regarding the agreements has not resulted in closed market in South Dakota." Order Regarding Public Interest, at 3.

regarding the standard for filing voluntarily negotiated interconnection agreements.[3] Qwest sought a standard that would be uniformly applicable over its entire fourteen-state region, and the FCC provided that standard in its October 4, 2002 Order.[4] The FCC's October 4 Order, as implemented by this Commission, will help ensure that Qwest and CLECs comply with their respective filing obligations.

Second, while Qwest's petition with the FCC was pending, Qwest voluntarily instituted a broad filing standard and other remedial measures as outlined in a letter from R. Steven Davis to the Commission, which was attached to the affidavit of Todd Lundy and which accompanied the filing of the Agreements in TC01-165. A copy of that letter is attached for the Commission's reference. The standard voluntarily implemented by Qwest in May of 2002 is substantively the same as that eventually articulated by the FCC's October 4 Order.

Third, Qwest has instituted an internal review process to ensure that experienced regulatory lawyers and other senior personnel review all CLEC settlement agreements for compliance with the FCC filing standard. Qwest created a six-person committee, composed of a state regulatory lawyer, a senior director of wholesale issues from the Policy organization, a lawyer from Wholesale and Commercial Law, a regulatory director from Network, a senior director from Wholesale, and a director of process management from Wholesale Service Delivery, to review wholesale settlement contracts. The committee is charged with applying the state and federal filing standards entered into after the committee's formation in June of 2002.

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[3] *See* In the Matter of Qwest Communications International Inc., Petition for Declaratory Ruling On the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1), WC Docket No. 02-89 (filed April 23, 2002).

[4] Memorandum Opinion and Order, *Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, FCC 02-276, WC Docket No. 02-89 (released Oct. 4, 2002). A copy is attached for the Commission's reference.

The committee meets at least once each week, and it is now a permanent part of Qwest's structure.

Fourth, Qwest has instituted management and structural changes intended to assure the Commission that Qwest will meet its filing obligations in the future. Qwest restructured its Wholesale Business Development department and shifted that department's responsibilities elsewhere, including to the Wholesale Service Delivery department. The management of Wholesale Business Development who oversaw the unfiled agreements, Greg Casey, the former Executive Vice President, and Audrey McKenney, the former Senior Vice President, are no longer employed by Qwest in any capacity. To replace them, Qwest has brought in Patricia Engels, a telecommunications business executive with extensive knowledge and experience and a longstanding commitment to regulatory compliance. Qwest's chief executive officer, Richard Notebaert, has directed her – and all Qwest employees – to ensure that their conduct is completely compliant with all regulatory requirements, and he has assured all Qwest employees that he will take swift and decisive employment action, including termination, in response to any instances of noncompliance.

Fifth, and perhaps most important to the instant dockets, in the summer and fall of 2002, Qwest reviewed all of the past agreements submitted last June in the 271 dockets, and identified those provisions that relate to Section 251(b) or (c) services on an on-going basis which have not been terminated or superseded by agreement, commission order, or otherwise. Then, in September 2002, Qwest petitioned the Commission to approve those provisions such that, to the extent any active provisions relating to Section 251 (b) or (c), they are formally available to other CLECs under Section 252(i). The Commission approved all such provisions pursuant to Section 252(e) on December 20, 2002. On January 13, 2003, Qwest made another filing under Section

252(e) of contracts that Qwest considers "form contracts" exempt from the filing standard. However, in order to assure compliance under even very broad interpretations of the filing standard, Qwest made those filings (Dockets TC03-024 through TC03-031). Approval of those contracts is pending. Thus, all currently on-going arrangements with CLECs, under very broad interpretations of the Section 251 filing standard, have been filed and are available for opt in under Section 252(i).

Qwest has taken each and every one of these remedial steps to affirm its commitment to compliance with the pro-competitive and deregulatory purposes of the Telecommunications Act of 1996. Qwest remains committed to these policies to assure continued compliance.

CONCLUSION

The absence of any CLEC interest in this combined docket demonstrates a corresponding lack of practical significance to proceeding any further. Qwest has instituted several remedial measures to resolve any remaining filing issues, and these efforts appear to have satisfied South Dakota CLECs. Qwest is always willing to work with the Commission and the Staff to address any specific filing issue; however, it appears that this docket may be closed.

Respectfully submitted this 25th day of February, 2003.

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May 21, 2002

Mr. Jim Burg, Chairperson
Ms. Pam Nelson, Vice Chairperson
Mr. Robert Sahr, Commissioner

Dear Commissioners:

There has been a lot of publicity over the past few weeks related to certain agreements that Qwest has entered into with competitive local exchange carriers. I am writing to advise you of new policies that Qwest is implementing in this area.

As you may know, ILECs routinely enter into agreements of many kinds with CLECs. Some of them may take effect immediately as in the normal business world. Others must be filed with and pre-approved by state commissions. Qwest itself has filed over 3,200 agreements with CLECs since the passage of the Telecommunications Act, including both initial agreements and amendments. This large number reflects our efforts to work with individual CLECs to meet their specific business needs. However, questions have been raised regarding a relative handful of our arrangements with CLECs. Some parties allege that under Section 252(a) of the Telecommunications Act such agreements also should have first been filed and approved.

Qwest disputes these allegations and is defending the legal line it drew between those agreements that did, and did not, need to be filed. Qwest also has filed a petition with the FCC asking for guidance on where the filing line is drawn.

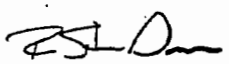
Meanwhile, however, Qwest is implementing two new policies that will eliminate debate regarding whether Qwest is complying fully with applicable law. First, Qwest will file all contracts, agreements or letters of understanding between Qwest Corporation and CLECs that create obligations to meet the requirements of Section 251(b) or (c) on a going forward basis. We believe that commitment goes well beyond the requirements of Section 252(a). However, we will follow it until we receive a decision from the FCC on the appropriate line drawing in this area. Unless requested by the Commission, Qwest does not intend to file routine day-to-day paperwork, orders for specific services, or settlements of past disputes that do not otherwise meet the above definition.

Second, Qwest has reviewed and is enlarging its internal procedures for evaluating contractual arrangements with CLECs and making all necessary filings. Qwest is forming a committee of senior managers from the corporate organizations involved in wholesale agreements: wholesale business development, wholesale service delivery, network, legal affairs attorneys, policy and law attorneys, and public policy. This committee will review agreements involving in-region wholesale activities to ensure that the standard described above is applied prior to the issuance of an FCC ruling, and that any later FCC decision also is implemented fully and completely.

Qwest is implementing these policies to eliminate any question about Qwest' compliance with the requirements of Section 252(a) in this state while Qwest's petition to the FCC is pending. We hope to continue to work with CLECs to meet their individual needs, as we have in the past. This is a practice that we are proud of, and we do not want to see it obscured by controversy over the meaning of Section 252(a), or decisions on line drawing in a small number of situations.

To the extent there are questions or concerns associated with the procedure outlined in this letter, please contact me.

Sincerely,



R. Steven Davis

CC: Rolayne Ailts-Wiest, General Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	
Petition for Declaratory Ruling on the Scope	)	WC Docket No. 02-89
of the Duty to File and Obtain Prior Approval	)	
of Negotiated Contractual Arrangements	)	
under Section 252(a)(1)	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2002 **Released:** October 4, 2002

By the Commission:

I. INTRODUCTION

1. On April 23, 2002, Qwest Communications International Inc. (Qwest) filed a petition for a declaratory ruling on the scope of the mandatory filing requirement set forth in section 252(a)(1) of the Communications Act of 1934, as amended (the Act).[1] Specifically, Qwest seeks guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of this section.[2] For the reasons explained below, we grant in part and deny in part Qwest's petition.

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[1] 47 U.S.C. § 252(a)(1). *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89 (filed April 23, 2002) (Qwest Petition).

[2] Qwest Petition at 3. The Commission requested and received comments on the Qwest Petition. *See* Pleading Cycle Established for Comments on Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No. 02-89, *Public Notice*, DA 02-976 (rel. April 29, 2002). The following parties submitted comments: AT&T Corp. (AT&T); Office of the Attorney General of the State of New Mexico and the Iowa Office of Consumer Advocate; Focal Communications Corporation and Pac-West Telecomm, Inc.; Iowa Utilities Board; Minnesota Department of Commerce; Mpower Communications Corp. (Mpower); New Edge Network, Inc.; PageData; Sprint Corporation (Sprint); Touch America, Inc. (Touch America); and WorldCom, Inc. (WorldCom). The following parties filed reply comments: Association of Communications Enterprises; Association for Local Telecommunications Services (ALTS); PageData; Qwest; Sprint; Verizon; VoiceStream Wireless Corporation; and WorldCom.

II. BACKGROUND

2. Section 252(a)(1) of the Act states:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement . . . shall be submitted to the State commission under subsection (e) of this section.[3]

Qwest argues that this section can most logically be read to mean that the mandatory filing and state commission approval process should apply only to the "rates and associated service descriptions for interconnection, services and network elements."[4] More precisely, Qwest contends that a negotiated agreement should be filed for state commission approval if it includes: (i) a description of the service or network element being offered; (ii) the various options available to the requesting carrier (*e.g.*, loop capacities) and any binding contractual commitments regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option (*e.g.*, recurring and non-recurring charges, volume or term commitments).[5]

3. According to Qwest, the following categories of incumbent LEC-competitive LEC arrangements should not be subject to section 252(a)(1): (i) agreements defining business relationships and business-to-business administrative procedures (*e.g.*, escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards);[6] (ii) settlement agreements;[7] and (iii) agreements regarding matters not subject to sections 251 or 252 (*e.g.*, interstate access services, local retail services, intrastate long distance, and network elements that have been removed from the national list of elements subject to

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[3] 47 U.S.C. § 252(a)(1).

[4] Qwest Petition at 10. Qwest contends that its interpretation of section 252(a)(1) is supported by the legislative history of the Telecommunications Act of 1996. *Id.* at 13-14.

[5] Qwest Petition at 29. Qwest also indicates that a description of basic operations support systems functionalities and options to which the parties have agreed should be filed and subjected to state commission approval. *Id.* at 29-30.

[6] Qwest Petition at 31-34.

[7] Qwest Petition at 34-36.

mandatory unbundling).[8]

4. Qwest states that a Commission ruling on this issue will eliminate the prospect of multiple, inconsistent rulings by state commissions and federal courts.[9] Qwest argues that a national policy concerning what must be filed under section 252(a)(1) is necessary to promote local competition, facilitate multi-state negotiations,[10] and prevent overbroad interpretations of this filing requirement.[11] According to Qwest, an overbroad interpretation would reduce the incentives of incumbents and competitive LECs to implement bilateral arrangements that could benefit both parties. For example, Qwest states that the public disclosure of contractual provisions such as settlements of past disputes might discourage the parties from entering into such arrangements.[12] Qwest also contends that an overbroad reading of section 252(a)(1) creates legal uncertainty with respect to the validity of agreements that have not gone through the prior state commission approval process.[13]

5. Most commenters oppose Qwest's petition,[14] arguing that it is unnecessary and that Qwest's proposal interprets too narrowly which agreements must be filed under section 252(a)(1).[15] For example, several commenters argue that service quality and performance standards relate to interconnection and are therefore appropriately included in interconnection agreements.[16] Commenters also contend that competitive LECs need dispute resolution, billing and provisioning provisions in their interconnection agreements.[17] The commenters also disagree with Qwest's view that only certain portions of agreements (related to section 251(b) or (c)) need to be filed for state commission approval and argue instead that the entire agreement must be

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[8] Qwest Petition at 36-37.

[9] Qwest Petition at 5.

[10] Qwest Petition at 27.

[11] Qwest Petition at 22.

[12] Qwest Petition at 22.

[13] Qwest Petition at 17-18, 23.

[14] We note that Verizon filed comments to respond to, in its view, inaccurate statements made by certain commenters. *See* Verizon Reply at 1, 2-3.

[15] *See, e.g.*, AT&T Comments at 16-18; Minnesota Department of Commerce Comments at 32-34; WorldCom Comments at 7; ALTS Reply at 4.

[16] WorldCom Comments at 7; ALTS Reply at 4.

[17] WorldCom Comments at 7; ALTS Reply at 4. Verizon, however, argues that agreements for unregulated services such as billing and collection are not interconnection agreements that must be filed under section 252. Verizon Reply at 2.

filed for state commission review and approval.[18]

6. The commenters dispute Qwest's assertions concerning the burden of "overfiling" agreements for state commission approval[19] and disagree with Qwest's interpretation of the legal status of agreements not filed under section 252 or not yet approved by state commissions under the same section.[20] Specifically, these commenters contend that nothing in section 252, or any other provision of the Act, provides that the parties are prohibited from abiding by the agreement's terms until a state commission completes its review of the negotiated agreement.[21] Moreover, according to AT&T, not only does the 90-day approval process not present any legal impediment to parties that would like to begin operating under the terms of a negotiated agreement prior to state commission approval, there is no practical impediment (*e.g.*, compliance jeopardy) because interconnection agreements are rarely rejected.[22]

III. DISCUSSION

7. We grant in part and deny in part Qwest's petition for a declaratory ruling. In issuing this decision, however, we believe that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements. Indeed, we believe this is consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.[23]

8. We begin our analysis with the statutory language. Section 252(a)(1) provides that the binding agreement between the incumbent LEC and the requesting competitive LEC must include a "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."[24] In addition, section 251(c)(1) requires incumbent LECs to negotiate in good faith, in accordance with section 252, the particular terms and conditions of agreements to implement their duties set forth in sections 251(b) and (c).[25] Based on these

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[18] AT&T Comments at 4, 6-9; Mpower Comments at 7; Sprint Comments at 3; WorldCom Comments at 6; ALTS Reply at 2.

[19] *See, e.g.*, AT&T Comments at 13; Sprint Comments at 3.

[20] AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

[21] AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

[22] AT&T Comments at 12-13, citing Qwest Petition at 9.

[23] As an example of the substantial implementation role given to the states, throughout the arbitration provisions of section 252, Congress committed to the states the fact-intensive determinations that are necessary to implement contested interconnection agreements. *See, e.g.*, 47 U.S.C. § 252(e)(5) (directing the Commission to preempt a state commission's jurisdiction only if that state commission fails to act to carry out its responsibility under section 252).

[24] 47 U.S.C. § 252(a)(1).

[25] 47 U.S.C. § 251(c)(1).

statutory provisions, we find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).[26] This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act. This standard recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs. We therefore disagree with Qwest that the content of interconnection agreements should be limited to the schedule of itemized charges and associated descriptions of the services to which the charges apply. Considering the many and complicated terms of interconnection typically established between an incumbent and competitive LEC, we do not believe that section 252(a)(1) can be given the cramped reading that Qwest proposes. Indeed, on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions.

9. We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1).[27] Unless this information is generally available to carriers (*e.g.*, made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements. The purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning.[28]

10. Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and, if so, whether it should be approved or rejected. Should competition-affecting inconsistencies in state decisions arise, those could be brought to our attention through, for example, petitions for declaratory ruling. The statute expressly contemplates that the section 252 filing process will occur with the states,

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[26] We therefore disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier. *See* Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America's suggestion to require Qwest to file with us, under section 211, all agreements with competitive LECs entered into as "settlements of disputes" and publish those terms as "generally available" terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. § 211.

[27] Qwest Petition at 31-33.

[28] We note that Qwest has filed for state commission approval agreements containing both dispute resolution provisions and escalation clauses. *See, e.g.*, Qwest Supplemental Reply, WC Docket No. 02-148, at 26-27 (filed Aug. 30, 2002). We incorporate by reference this document into the record in the instant proceeding.

and we are reluctant to interfere with their processes in this area. Therefore, we decline to establish an exhaustive, all-encompassing "interconnection agreement" standard. The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed. We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval. At the same time, nothing in this declaratory ruling precludes state enforcement action relating to these issues.[29]

11. Consistent with our view that the states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard, we decline to address all the possible hypothetical situations presented in the record before us. We are aware, however, of some disagreement concerning interconnection agreement issues raised recently in another proceeding previously before the Commission.[30] Consequently, we determine that additional, specific guidance on these issues would be helpful.

12. The first matter concerns which settlement agreements, if any, must be filed under section 252(a)(1). We disagree with the blanket statement made by Qwest in its petition that "[s]ettlement agreements that resolve disputes between ILECs and CLECs over billing or other matters are not interconnection agreements under Section 252."[31] Instead, and consistent with the guidance provided above, we find that a settlement agreement that contains an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1). Merely inserting the term "settlement agreement" in a document does not excuse carriers of their filing obligation under section 252(a) or prevent a state commission from approving or rejecting the agreement as an interconnection agreement under section 252(e). However, we also agree with Qwest that those settlement agreements that simply provide for "backward-looking consideration" (*e.g.*, the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed.[32] That is, settlement contracts that do not affect

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[29] This statement also applies to any state enforcement action involving previously unfiled interconnection agreements including those that are no longer in effect.

[30] *Application by Qwest Communications International Inc., Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC 02-148 (filed June 13, 2002). *See also* Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed Sept. 10, 2002) (withdrawing Qwest's joint applications filed in both dockets); *Application by Qwest Communications International Inc., Consolidated Application for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02-148, *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington and Wyoming*, WC Docket No. 02-189, Order, DA 02-2230 (rel. Sept. 10, 2002) (terminating both Qwest section 271 dockets).

[31] Qwest Petition at 34.

[32] Qwest Reply at 25-26. *See also* Minnesota Department of Commerce Comments at 6-7 (stating that it did not include in its complaint against Qwest filed with the Minnesota Public Utilities Commission "settlement agreements of what appear to be legitimate billing disputes").

an incumbent LEC's ongoing obligations relating to section 251 need not be filed.

13. Qwest has also argued, in another proceeding, that order and contract forms used by competitive LECs to request service do not need to be filed for state commission approval because such forms only memorialize the order of a specific service, the terms and conditions of which are set forth in a filed interconnection agreement.[33] We agree with Qwest that forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement do not constitute either an amendment to that interconnection agreement or a new interconnection agreement that must be filed under section 252(a)(1).

14. Further, we agree with Qwest that agreements with bankrupt competitors that are entered into at the direction of a bankruptcy court or trustee and do not otherwise change the terms and conditions of the underlying interconnection agreement are not interconnection agreements or amendments to interconnection agreements that must be filed under section 252(a)(1) for state commission approval.[34] We are unaware of any carrier submitting such agreements for state commission approval under section 252. Directing carriers to do so has the potential to raise difficult jurisdictional issues between the bankruptcy court and regulators and could entangle carriers in inconsistent and, possibly, conflicting requirements imposed by state commissions, bankruptcy courts, and this Commission.

IV. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251, 252 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251, 252, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Qwest's Petition for Declaratory Ruling IS GRANTED IN PART and IS DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[33] Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189, at 2-3 (filed Sept. 5, 2002). We incorporate by reference this letter into the record in the instant proceeding. *See also* Minnesota Department of Commerce Comments at 7 (stating that it also did not include in its complaint "day-to-day operational agreements that implement specific provisions of interconnection agreements" such as collocation agreements and applications for access to poles, ducts, conduits, and rights of way).

[34] Qwest Supplemental Reply, WC Docket No. 02-148, at 19-20 n.29 (filed Aug. 30, 2002).

Qwest
Spirit of Service

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April 24, 2003

Kelly Frazier
Staff Attorney
Public Utilities Commission of the State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

Re: Dockets TC03-002 through TC03-021

Dear Mr. Frazier:

Thank you for your time and effort spent working with us on these agreements. We appreciate your willingness to meet with us to work through these important issues. At our last meeting, you provided us with several informal questions, which we have investigated and answer below. Our hope is that these answers will resolve all your concerns and enable you to recommend closing each docket. Please do not hesitate to call, write, or email Tim Goodwin at the above addresses, or Todd Lundy at 303-896-1446 or tlundy@qwest.com, if you have any further questions or concerns.

1. *TC03-002. Is "Advanced Telcom Group, Inc." the same as "Advanced Telecom"? In the matrix under the term "Party" it is noted that Advanced Telcom Group, Inc. is now Ionex. Did Qwest mean to say Advanced Communications Group?*

Response: Qwest intended to say that Advanced Communications Group is now Ionex. The point we were attempting to make is that Advanced Telecom Group is not a South Dakota CLEC, and thus the Advanced Telecom Group agreement does not implicate South Dakota.

2. *Qwest has previously argued that agreements which have been cancelled or are no longer in effect do not need to be filed with the Commission for approval. Were any agreements cancelled or otherwise disposed of to avoid having to file them?*

Response: The answer is "No." To expand upon our answer to this question, agreements were cancelled or terminated or expired for other reasons. First, an agreement may expire by its own terms. Second, an agreement may be superseded by

a subsequent agreement. Third, disputes arise regarding the interpretation of the agreement, and the parties may wish to both resolve the past dispute and terminate the contract. Fourth, as to some of the agreements, state commission staffs have stated that performance under contracts may result in a discriminatory effect. Preventing any alleged future discrimination is a good faith reason for negotiating the termination of such agreements.

3. *TC03-005, 006 & 010. In 005 & 006 Qwest agreed to pay McLeod $25.5 million. In 010 Qwest agreed to pay McLeod $27.5 million. Is the $27.5 million discussed in 010 in addition to the $25.5 million discussed in 005 & 006 or is it a $2 million dollar increase of the $25.5 millions discussed in 005 & 006?*

Response: Before directly answering this question, we wish to point out that each of the identified provisions are settlements of past disputes involving payment of backward-looking consideration, which the FCC has ruled does not constitute terms of an interconnection agreement or amendment and not subject to the filing obligations under Section 252(a) and (e).

To answer your question, the $27.5 million in the September 29, 2000 agreement resolves a dispute relating to the ability of McLeod to bill IXCs for switched access, and it is in addition to the $25.5 million in the April; 28, 2000 agreement that resolved miscellaneous billing disputes.

4. *TC03-009. (Qwest matrix). In what docket was the ICA filed and approved, as discussed in the "Qwest Analysis" portion of the matrix?*

Response: TC00-107. Also, you asked us last week for the differences between "UNE-E" and "UNE-M." We note that the agreements containing UNE-E, for Eschelon, and UNE-M, for McLeod, were filed with the respective state commissions for approval. In short, the differences include rates, amount of volume commitments, number of available features, directory listings availability, and duration.

5. *TC03-011 and 012. Did any money actually trade hands between Qwest and McLeod under these agreements? If so, what did each party purchase from each other? Was there a difference paid to McLeod from Qwest; to Qwest from McLeod? How does a cash refund not constitute a refund of rates?*

Response: Both parties made payments. Telecommunications services generally, both in-region and out-of-region, were the subject of both agreements. Qwest did pay McLeod for differences under this arrangement. And, in other proceedings, allegations have been made that Qwest entered into an oral agreement for a discount, or in your words, a refund. The method by which McLeod recorded and accounted for the payments evidences a volume purchase agreement, rather than a discount. That is, McLeod accounted for these payments as revenues, which is consistent with a volume purchase obligation, and did not account for them as reductions in expense, which would have been consistent with a discount. Also, no

carrier in South Dakota appears to be concerned with these agreements, as shown by the absence of any intervention or filing of comments in these dockets.

6. *TC03-011. Does section 1.4.3 have a typographical error when it describes when McLeod's obligations are terminated under the PA? Should that paragraph actually describe when Qwest's obligations are terminated under the PA?*

   Response: Yes.

7. *TC03-016 & 017. Did money actually trade hands between Qwest or QCC and McLeod under these agreements? Please provide a signed and dated copy of each of these agreements.*

Response: The entire payment for the QC agreement was made, and the first installment was paid under the QCC agreement. A dispute arose as to the QCC agreement and the arrangements with McLeod, and the parties entered into a settlement.

We have not located signed copies, however, the parties operated under the terms of the document we have provided.

8. *TC03-017. Does QCC enter into an agreement that binds QC in this agreement? Please clarify the parties that are bound by this agreement.*

Response: The individual responsible for negotiating this agreement is no longer with the company. Generally, QCC agreements do not bind QC. It appears that TC03-016 and TC03-017 were structured to distinguish between QCC and QC obligations.

9. *TC03-012. Does this include "affiliates"? Please describe whether the agreement is intended to include affiliates and whether the contracts, in general, make distinctions between QC, QCC, and "affiliates".*

Response: The individual responsible for negotiating this agreement is no longer with the company, but to our understanding, TC03-012 was intended at the time (October 26, 2000) to include QCC and its affiliate QC.

10. *TC03-013 & 014. In these agreements it appears that Qwest and McLeod trade $5 million on the same day. Did money actually trade hands as a result of these agreements? Please explain why the companies would be agreeing to pay each other $5 million on the same day.*

Response: Yes, payments were made pursuant to these agreements. In fact, different amounts were paid to each company. Qwest paid McLeod $32.5 million, and McLeod paid Qwest $43.5 million. The individuals responsible for negotiating the terms of these agreements are no longer with the company, but generally, it is our

understanding that amounts of agreements are negotiated based upon the nature of different disputes at issue, and payments are made to reflect the nature of the underlying issue.

Also, these are settlements of past disputes involving payment of backward-looking consideration, which are not subject to the filing obligations under Section 252(a) and (e).

Again, thank you for meeting with us and for sharing your analysis, questions, and concerns. We remain committed to working with the Staff and Commission to further Qwest's proactive, broad standard for filing interconnection agreements, and look forward to working with you on these issues in the future.

Sincerely,

Todd L. Lundy

Timothy J. Goodwin

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF A SUBJECT TO RULE OF EVIDENCE 408, CONFIDENTIAL AMENDMENT TO CONFIDENTIAL BILLING SETTLEMENT AGREEMENT BETWEEN QWEST CORPORATION AND MCLEODUSA INCORPORATED	ORDER FINDING FILING NOT MANDATORY TC03-010

The above agreement was filed with the Commission on June 13, 2002, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On November 22, 2002, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. Qwest requested confidential treatment of the contents of this agreement pursuant to ARSD chapter 20:10:01.

On January 16, 2003, the Commission electronically transmitted notice of the filing of the agreement to interested individuals and entities. The notice stated that any person wishing to comment on the agreement had until February 5, 2003, to do so. On February 6, 2003, the Commission received comments from AT&T Communications of the Midwest, Inc.. On February 25, 2003, the Commission received a response from Qwest Corporation.

At its duly noticed June 17, 2003, meeting, the Commission considered this matter. The Commission voted unanimously that this filing does not fall under the mandatory filing requirements of section 252(a)(1) of the Telecommunications Act of 1996, and therefore does not require Commission approval. It is therefore

ORDERED, that this filing does not require Commission approval.

Dated at Pierre, South Dakota, this 26th day of June, 2003.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 6/26/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner