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Jason D. Topp
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June 15, 2007

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

**Re: Qwest Corporation's Withdrawal of Section 252(f) Statement of
Generally Available Terms Compliance**

Dear Ms. Van Gerpen:

Enclosed is Qwest Corporation's Withdrawal of its Statement of Generally Available Terms and Conditions regarding the above-referenced matter.

Very truly yours,


Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

Qwest Corporation's Withdrawal of Section 252(f) Statement of Generally Available Terms Compliance	Docket No.
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**QWEST CORPORATION'S WITHDRAWAL OF ITS STATEMENT
OF GENERALLY AVAILABLE TERMS AND CONDITIONS**

Introduction

Qwest Corporation ("Qwest") files this notice formally withdrawing its Statement of Generally Available Terms and Conditions ("SGAT") in South Dakota. Qwest's SGAT has become outdated because applicable law has changed since Qwest last filed revisions to its SGAT. The Triennial Review Order, the TRRO, and abolition of the pick and choose requirement in favor of the all-or-nothing rule have made many SGAT terms incompatible with existing and controlling law. Further, the SGAT has not been used as the interconnection contract template for over two (2) years.

In contrast to other provisions of the SGAT, Qwest's Performance Indicator Definitions (PIDs) included as Exhibit B to the SGAT and the Performance Assurance Plan (PAP) have been the subject of periodic review and updates pursuant to processes contained in the PAP. The purpose of these reviews has been to provide current performance indicator definitions to the Commissions for their application across all CLECs. Because this process thus far has been a successful method of applying current performance indicator definitions on a non-discriminatory basis, Qwest will continue to make PIDs and the PAP available to

CLECs until such time as the PAP, found in Exhibit K of the SGAT, is withdrawn or otherwise eliminated.

Discussion

The legal requirements established for RBOCs to obtain entry to offer interLATA toll services are identified in 47 U.S.C. §271(c). Under those requirements, there are two options that RBOCs may utilize to provide proof that it meets the requirements in each state. To summarize, the RBOC meets requirements if it:

Subparagraph (A) - "has entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange services (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers."

or:

Subparagraph (B) - "A Bell operating company meets the requirements of this subparagraph if, . . . no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f)."

At the time Qwest began its effort to obtain 271 relief, not every state clearly had a CLEC operating under an Interconnection Agreement ("ICA") meeting subparagraph (A) requirements nor was it clear what the complete requirements of the 14 point checklist entailed. Therefore, Qwest elected to obtain state approval using a collaborative workshop process to explore and resolve literally hundreds of issues relating to specific provisions of Qwest's proposed SGAT. At the time, the SGAT was the document that provided a single, common vehicle for these collaborative workshops with CLECs and Commissions to assure

Qwest's agreements met the checklist requirements. Qwest filed its original SGAT on October 30, 1996 and, as a result of the collaborative workshop process, four (4) revisions were made to the South Dakota SGAT. These revisions were filed on November 22, 2000, November 2, 2001, May 20, 2002 and December 12, 2002.

In February 2003, the FCC adopted the order commonly known as the Triennial Review Order ("TRO") (CC Docket Nos. 01-338, 96-98 and 98-147) which was released on August 21, 2003. The TRO substantially altered Qwest's obligations under Section 251 of the Act to offer unbundled network elements. As a result, Qwest filed a TRO-compliant SGAT with the South Dakota PUC on February 20, 2004.

The TRO was appealed by a number of parties, and the case was heard by the United States Court of Appeals for the District of Columbia. On March 2, 2004, the Court decided *United States Telecom Association v. Federal Communications Commission and the United States of America*, (*USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (effective June 16, 2004), commonly known as the "USTA II Decision". In that decision, the DC Circuit Court vacated the Triennial Review Order in part and remanded it in part.

The FCC subsequently issued Interim Rules in its Order and Notice of Proposed Rulemaking *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338 (effective September 13, 2004) ("Interim Rules").

Because of the multiple appeals of this order and apparent changes that were going to be required by the Court and subsequent FCC orders, representatives from several state utility commissions expressed concern that, in light of these developments, it did not seem

efficient to review the TRO-compliant SGAT Qwest had filed. Qwest agreed and withdrew the filing on March 16, 2004.

In the meantime, however, because many of the 251 obligations had changed, Qwest proceeded to make changes to the Interconnection Agreement it offered to CLECs in order to be compliant with those changes. The underlying Interconnection Agreement document, which was based upon the language from the SGATs, became known as the “Template Agreement.” The Template Agreement is Qwest’s starting point for negotiations with CLECs. This document not only reflects the current state of the law, but also has been modified to be more consistent in its language across the 14 states. This was done at the encouragement of CLECs who operated in multiple states and Qwest operations people applying contractual requirements who all desired more consistency. In those instances where there was a specific state Commission order issued that created substantive deviation from language and intent of other states, Qwest preserved that modification as part of the Template Agreement offer.

Qwest now has Interconnection Agreements with 13 CLECs in South Dakota, all of which were reviewed and approved by the Commission under Section 252. The existence of these agreements is indisputable fact that Qwest meets the requirements of Section 271(c)(A) of the Act. Section 271(c)(A) and (B) are phrased in the disjunctive, and thus the Act does not require both an SGAT and the existence of multiple interconnect agreements as intimated by the South Dakota PUC Staff. In fact, the FCC’s Orders approving Qwest’s Section 271 applications were based, in part, on the FCC determination that Qwest satisfied the requirements of Track A. *Qwest Arizona 271 Order*, 18 FCC Rcd 25504, 25527 (FCC 2003); *Qwest Minnesota 271 Order*, 18 FCC Rcd at 13356, para. 61; *Qwest 9-State 271*

Order, 17 FCC Rcd at 26318-19, para. 32; *Qwest New Mexico, South Dakota, Oregon 271 Order*, 18 FCC Rcd 7325, 7332 (FCC 2003).

Through the Template Agreement and the Interconnection Agreements noted above, Qwest continues to meet its obligations under Section 251. As contemplated and authorized by Section 252 of the Act, if any CLEC feels that Qwest is denying them required services as part of the Template Agreement offer and resulting negotiations, they may request the Commission arbitrate those disputed terms. In addition, Qwest meets its obligations to provide the checklist services required by Section 271, through the commercial agreements (i.e., QPP) Qwest has made available to CLECs.

Since May 2005 when Qwest stopped allowing CLECs to adopt the 2002 SGAT, Qwest has entered into Interconnection Agreements with 13 CLECs in South Dakota, all of which were reviewed and approved by the Commission pursuant to Section 252. Of these 13 agreements, 5 were negotiated, 2 are adoptions of agreements other than the Template Agreement, and 5 are adoptions of the Template Agreement. The only arbitration (Covad) was not about Qwest's failure to offer 251 services, but was whether certain services identified as being required to be offered under the requirements of Section 271 should be part of the 252 Interconnection Agreement or separate agreements.

The absence of an SGAT in no way impacts or diminishes the South Dakota PUC's input or control over the terms and conditions of Section 252 agreements. The Commission maintains its authority to serve as arbitrator and to render the final decisions on disputed interconnection agreement terms and conditions between Qwest and CLECs. The Commission also maintains its authority to reject any agreement or amendment filed with the PUC if a) it is found to discriminate against a telecommunications carrier not a party to the

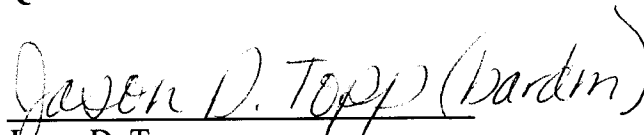
agreement, b) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity or, c) the agreement does not include South Dakota specific language requirements.

Conclusion

For the reasons set forth above, and based upon the law, Qwest believes its statement of generally available terms and conditions is incompatible with controlling law and should not be the basis of an interconnection agreement between Qwest and a CLEC. Accordingly, Qwest formally withdraws its SGAT with the exception of the performance indicator definitions attached as Exhibit B.

Dated this 15th day of June, 2007.

QWEST CORPORATION

Handwritten signature of Jason D. Topp in cursive script, with the name "Jason D. Topp" written in parentheses to the right of the signature.

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