STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: AT&T CORPORATION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-02-2

ORDER MAKING TENTATIVE FINDINGS,
GIVING NOTICE FOR PURPOSES OF CIVIL PENALTIES,
AND GRANTING OPPORTUNITY TO REQUEST HEARING

(Issued May 29, 2002)

PROCEDURAL HISTORY

On February 27, 2002, AT&T Corporation (AT&T) filed with the Utilities Board (Board) a letter alleging that Qwest Corporation (Qwest) may have entered into a series of interconnection agreements granting preferential treatment to some competitive local exchange carriers (CLECs). AT&T stated that the Minnesota Department of Commerce (Minnesota Department) had recently filed a complaint before the Minnesota Public Utilities Commission alleging Qwest has entered into secret agreements with various CLECs to provide preferential treatment for those CLECs; that the agreements were characterized as amendments to existing interconnection agreements; and that Qwest had not filed the agreements with the

Minnesota Public Utilities Commission as required by 47 U.S.C. §§ 251(c) and 252(a)-(i). AT&T alleged that the allegations in Minnesota show there is good cause to believe similar agreements exist in Iowa, requiring a close examination of Qwest's practices.

On March 11, 2002, Qwest filed a letter with the Board which intended to provide background information regarding the Minnesota proceedings. Qwest asserted it exercised good faith in deciding when a particular contract arrangement with a CLEC requires a state agency filing. Qwest argued the § 252 mandatory filing requirements may be ambiguous, but negotiations with CLECs to resolve past disputes or define administrative business procedures do not require filing under § 252. Qwest included two attachments with its letter; first, a copy of Qwest's answer to the Minnesota Department complaint and second, copies of three agreements identified by the Minnesota Department that involve CLECs operating in Iowa.

On March 25, 2002, Qwest filed its answer to AT&T's complaint letter and a motion to dismiss. In its motion to dismiss, Qwest argued that AT&T had not offered any facts or law to support the statements in its letter, but instead invited the Board to commence an investigation "in an area in which the law is still developing." Qwest argued it was not appropriate or necessary to commence such an investigation.

On April 1, 2002, the Board issued an order docketing AT&T's complaint letter for investigation and denying Qwest's motion to dismiss. The Board found that while the issues surrounding the various Qwest-CLEC agreements may ultimately require

investigation, it would be more efficient to begin this docket by addressing a legal question, *viz*, the scope of the obligation to file interconnection agreements pursuant to federal law. Accordingly, the Board established a briefing schedule, inviting the parties to use the agreements Qwest filed with its letter of March 11, 2002, to illustrate their arguments, along with any other agreements obtained through discovery or already in the possession of a party.

Pursuant to the schedule set by the Board, initial and reply briefs were filed by AT&T, Qwest, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

On April 23, 2002, AT&T filed a motion asking the Board to issue subpoenas to Qwest and to all CLECs operating in Iowa that have entered into an interconnection agreement with Qwest or that purchase interconnection services pursuant to Qwest's statement of generally-available terms (SGAT). AT&T seeks a subpoena issued by the Board and in the Board's name, rather than a subpoena that would permit AT&T to conduct its own discovery.

On May 2, 2002, Qwest filed a copy of a public notice issued by the Federal Communications Commission (FCC) on April 29, 2002, establishing a pleading cycle for a petition Qwest filed with the FCC on April 23, 2002. In the petition, Qwest asks that the FCC issue a declaratory ruling concerning which types of negotiated contractual arrangements between an ILEC and a CLEC are subject to the

mandatory filing and 90-day state commission pre-approval requirements of § 252(a)(1).

On May 6, 2002, Qwest filed a statement in opposition to AT&T's motion for issuance of subpoenas. Qwest argues AT&T's request is premature because it would be inefficient to conduct discovery before the legal issues have been addressed. Qwest also argues AT&T's request is overly broad because it seeks production of agreements that are not currently at issue from CLECs that are not currently parties to this proceeding.

On May 10, 2002, Qwest filed a motion to stay this docket until the FCC rules on Qwest's petition for declaratory ruling.

ANALYSIS[1]

A. The Definition Of "Interconnection Agreement" And The Obligation To File

A legal duty of all carriers to interconnect with competing carriers is established in 47 U.S.C. § 251. An incumbent local exchange carrier (ILEC), such as Qwest, has additional duties to negotiate in good faith the terms and conditions of interconnection agreements, including access to unbundled network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and collocations, pursuant to 47 U.S.C. § 251(b) and (c). When

[1] While the Board has reviewed and considered all of the briefs, this analysis relies to a great extent on the Consumer Advocate's initial brief, which has been very helpful in this matter.

agreement regarding these matters is reached, whether voluntarily negotiated pursuant to § 252(a)(1) or adopted by arbitration pursuant to §252(b)-(d), the agreement must be submitted to the state regulatory commission (in Iowa, the Board) for approval pursuant to § 252(e). The Board has adopted rules that require the filing of "all interconnection agreements" adopted by arbitration or negotiation. 199 IAC 38.7(4). The requirement applies to both parties to the agreement; neither the statute nor the rule releases either party from the filing obligation.

State approval of each interconnection agreement is required to ensure that an agreement does not discriminate against other carriers that are not parties to the agreement, that implementation of the agreement is in the public interest, and that it conforms to the duties imposed on local exchange carriers by § 251 and the pricing standards imposed by § 252(d). As the Federal Communications Commission (FCC) explained in its First Report and Order[2]:

> As a matter of policy . . . we believe that requiring filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.

(Emphasis in original.) After review and approval, the Board is required to make a

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[2] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *slip op.* ¶ 167 (August 8, 1996) (First Report and Order).

copy of each agreement available for public inspection and copying pursuant to § 252(h). Each LEC is then required to "make available any interconnection, service, or network element provided under an agreement approved under [§ 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." § 252(i). The FCC identified the policy behind these requirements as one of preventing discrimination:

> Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i).

Id.

The terms "agreement" and "interconnection agreement" are not defined in the federal statute or the Board's rules and may not be susceptible of a single, specific definition that will adequately address all future circumstances. Still, one federal court has defined "interconnection agreement" as follows: "An 'interconnection agreement' under the act consists of detailed technological and monetary provisions that may be arrived at through voluntary negotiation." TCG Milwaukee, Inc., v. Public Service Comm. of Wisconsin, 980 F. Supp. 992 (W.D. Wis. 1997). That definition incorporates the statutory components of an interconnection agreement: It must be binding; it must relate to a request for interconnection, services, or network elements

pursuant to § 251; and it must include a schedule of itemized charges for interconnection and each service or network element included in the agreement. Section 252(a)(1).

The term "network element" is broadly defined in the statute. It includes "a facility or equipment used in the provision of a telecommunications service" and "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of telecommunications services." 47 U.S.C. § 153(9).

Given the breadth of these definitions, and the broad public purposes served by the filing and approval requirements of § 252(e), it would appear that any binding arrangement or understanding between an ILEC and a competitive local exchange carrier (CLEC) about any aspect of the interconnection between the two carriers, or the provision of services or network elements which in turn are used to provide a telecommunications service, should qualify as an interconnection agreement under § 252(a)(1) and should be filed with the Board for approval.

This interpretation is supported by the language used by Congress in the relevant statutes. Section 252(e)(1) requires filing of "any interconnection agreement," while § 252(i) requires that "any interconnection service or network element provided under an agreement" must be made available to any other carrier.

The statute does not recognize or create any exceptions; "any" agreement must be filed, not just selected ones.

The FCC has offered this explanation for the broad reach of this statute (albeit in a discussion of why pre-Act agreements should be filed and approved):

> In addition, we believe that having the opportunity to review existing agreements may provide state commissions and potential competitors with a starting point for determining what is "technically feasible" for interconnection. Conversely, excluding certain agreements from public disclosure could have anticompetitive consequences. For example, such contracts could include agreements not to compete.

First Report and Order, ¶¶ 167-68. While the quoted language relates to agreements that pre-date the 1996 Act, the reasoning applies equally to post-Act agreements. Competitors will be assisted in their negotiations if they can determine that a particular service or configuration is technically feasible for interconnection or that a particular business arrangement is available because it has already been made available to another CLEC. Similarly, a post-Act agreement might include anti-competitive provisions, just as a pre-Act agreement might have.

Thus, for present purposes the Board will define an interconnection agreement that must be filed with the Board pursuant to § 252(a)(1) as a negotiated or arbitrated contractual arrangement between an ILEC and a CLEC that is binding; relates to interconnection, services, or network elements, pursuant to § 251, or defines or affects the prospective interconnection relationship between two LECs. This definition includes any agreement modifying or amending any part of an existing

interconnection agreement. This is not intended to be an exclusive or all-encompassing definition; it is difficult, if not impossible, to predict all of the various types of future arrangements that may implicate the public policies of the Act and, therefore, be appropriately considered interconnection agreements. However, this definition appears to be sufficient for present purposes, and the Board adopts it for this proceeding and for the future guidance of interested entities.

B. Application To The Agreements Filed March 11, 2002

Applying this definition and the underlying principles to the agreements filed by Qwest in this docket on March 11, 2002, as discussed in detail below, it appears those agreements include interconnection agreement provisions that should have been filed with the Board pursuant to § 252. Because these provisions speak for themselves and appear to fall within the definition set forth above, in the absence of a material issue of fact the Board is able to proceed to apply the law to the documents and can conclude that Qwest has violated its obligations under § 252 and 199 IAC 38.7(4). If Qwest disagrees with the Board's tentative conclusions, set forth below, Qwest can request a hearing to further explore the facts, but any such request for hearing must identify a disputed issue of material adjudicative fact and explain how that issue will best be resolved by means of a hearing. Mere disagreement with the tentative finding that the following agreements are interconnection agreements will not justify a hearing.

1. The Covad Agreement

The first agreement attached to Qwest's March 11, 2002, filing involves Qwest, U S WEST Communications, Inc. (U S WEST), and Covad Communications Company (Covad) (hereinafter the Covad Agreement). It specifies certain service quality standards relating to Qwest's Firm Order Commitment (FOC) process, service intervals, new service failure rates, and facilities problems. The agreement then provides that, "Based on U S WEST's [Qwest's predecessor's] commitment to meet these service performance standards, Covad commits to withdrawing its opposition to the U S WEST/Qwest merger." (Covad Agreement at page 3 of 3.)

The Covad Agreement includes several specific interconnection performance standards. For example, U S WEST (and, as a result of the subsequent merger, Qwest) agrees to provide 90 percent of Covad's FOC dates within 48 hours of receipt of a service request for regular unbundled loop services and within 72 hours of a service request for DSL-capable, ISDN-capable, and DS-1-capable unbundled loop services. (Covad Agreement, § 1.) U S WEST agreed to provide Covad with unbundled loop service consistent with U S WEST's Standard Interval Guide at least 90 percent of the time. (Id., § 2.) U S WEST agreed to reduce the failure rate for new service orders to less than 10 percent within 30 calendar days. (Id., § 3.) Finally, U S WEST agreed to specific procedures for handling Covad service requests that are accepted but cannot be completed due to lack of facilities or need for line conditioning. A variety of options are made available to Covad in these

situations. (Id., § 4.) Each of these service quality standards relates to interconnection, would have been of interest to other CLECs negotiating with U S WEST in the relevant time frame, and may still be of interest to other CLECs negotiating with Qwest today.

Qwest argues that the Covad Agreement is "simply an articulation of Covad's desires and expectations for Qwest's service levels rather than an obligation for Qwest to attain particular standards,"[3] but that argument ignores the plain language of the Covad Agreement, quoted above. Qwest committed to meet certain service performance standards applicable to important interconnection matters such as FOCs, service intervals, new service failure rates, and facilities problems. It appears there can be no serious argument that performance standards of this nature are not properly considered a part of an interconnection agreement, as they are a necessary part of defining the interconnection services that Qwest is agreeing to provide. Thus, the Covad Agreement should have been filed with the Board, pursuant to § 252 and the Board's rules. Qwest's failure to do so is a violation of the statute and the rules.

2. McLeod Agreement No. 1

The other two agreements filed by Qwest on March 11, 2002, are with McLeodUSA Incorporated (McLeod). The Board tentatively concludes that they are also interconnection agreements that should have been filed with the Board. The first agreement (McLeod Agreement No. 1), entitled "Confidential Billing Settlement

[3] See Qwest's "Verified Answer To The Complaint Of The Minnesota Department Of Commerce," filed in this docket by Qwest on March 11, 2002.

Agreement," is dated April 28, 2000. McLeod Agreement No. 1 begins by recognizing that U S WEST and McLeod have entered into interconnection agreements pursuant to §§ 251 and 252 which "have been approved by the appropriate state commissions where those agreements were filed pursuant to the Act." (McLeod Agreement No. 1, page 1, ¶ 3.) The agreement then proceeds to amend those existing, filed, and approved interconnection agreements.

For example, the parties agreed to the going-forward rates McLeod would pay to U S WEST for subscriber list information. (Id., page 3, ¶ 2.b.) U S WEST also agreed to amend its existing interconnection agreements with McLeod to incorporate bill-and-keep in place of reciprocal compensation. (Id., page 3, ¶ 2.c.) The parties further agreed that, following closure of the U S WEST–Qwest merger, all interim rates (other than reciprocal compensation rates) would be treated as final and any final commission orders entered in any of the 14 U S WEST states through April 30, 2000, would be applied to McLeod on a prospective basis only, not retroactively, apparently regardless of the terms of the commission order. (Id., page 4, ¶ 2.d.) Each of these provisions is an amendment of one or more of the existing, approved interconnection agreements between U S WEST and McLeod.

In its answer to the Minnesota Commission, Qwest argues that the provision making interim rates final was a resolution of a bona fide business dispute regarding the application of the resale discount rate in Minnesota. The Minnesota Commission reduced the resale discount from 21.5 percent to 17.66 percent by oral order on

January 11, 2000, and U S WEST and McLeod disagreed regarding the retroactive effect of that order. They settled the dispute on the terms described above, giving McLeod the benefit of the greater interim discount through April 30, 2000. Qwest argues that other carriers buying services for resale in Minnesota were required to pay the reduced final discount rate beginning on February 8, 2000, "and thus McLeod did not receive favorable treatment."

It appears there can be no real argument that this change in the rates for Qwest's wholesale services is anything other than an interconnection agreement. Some of the rates are specific to Minnesota, but other provisions purport to apply in all 14 Qwest states, including Iowa. McLeod Agreement No. 1 amends the terms of the existing interconnection agreements between McLeod and Qwest in all of these states; by itself, this fact appears to be sufficient to establish that the new contract is an interconnection agreement.

Even Qwest's own proposed test for determining whether an agreement is an "interconnection agreement" recognizes that the rates for resold and unbundled services are a part of an interconnection agreement, and this agreement determines the rates for those services in all 14 Qwest states. McLeod Agreement No. 1 is an interconnection agreement that had to be filed with the appropriate state commissions for review, approval, and public filing, even under the test proposed by Qwest.

Moreover, Qwest's statements appear to show that as a result of this agreement Qwest discriminated against other CLECs in favor of McLeod, at least in Minnesota. Other CLECs that purchased services for resale apparently began paying higher rates on February 8, 2000, but McLeod was permitted to continue to purchase those same services at the lower interim rates for several more weeks. It was a form of discrimination to extend this favored treatment to McLeod and not to other CLECs. This discrimination would not have been possible if the agreement had been filed with the various state commissions where it was intended to have effect (all 14 Qwest states). Because the agreement was not filed in any state, Qwest was able to extend uniquely favorable treatment to McLeod, in return for which McLeod dropped its opposition to the Qwest-U S WEST merger. Thus, Qwest's failure to file McLeod Agreement No. 1 violated both the letter and the purpose of the statute and the Board's rule.

Moreover, if the issue had been presented to the Board at the appropriate time, the Board might have concluded that it is against public policy for the parties to agree in advance that "any final commission orders entered in any of the 14 states in U S WEST's territory through April 30, 2000, and on a going-forward basis through December 31, 2002, . . .will be applied prospectively to McLeodUSA, and not retroactively." (McLeod Agreement No. 1 at page 4.) The Board need not decide this question now, but it is possible that a reasonable agency could conclude that the parties to an interconnection agreement are not entitled to insulate one CLEC from

the possible retroactive effects of future agency decisions while other CLECs doing business with Qwest would continue to be subject to those orders, especially if the result of this agreement is that Qwest might have to violate future Board orders in order to honor Qwest's agreement with McLeod.

3. McLeod Agreement No. 2

Qwest also filed in this docket a second agreement with McLeod, dated October 26, 2000 (McLeod Agreement No. 2), through which the parties agree to (a) "establish processes and procedures to better implement the parties' Interconnection Agreements" (page 1, ¶ 1), (b) "attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve" issues involving the implementation of the interconnection agreements (Id., page 1, ¶ 2), and (c) establish escalation procedures to facilitate dispute resolution. (Id., page 2, ¶ 3.) Qwest argues that these provisions "are integrally connected to how Qwest and a CLEC manage their business-to-business relationship with one another," but also argues that because CLECs vary, it is "impracticable to make such procedures and arrangements 'generic.'" Qwest asserts that because the agreement relates to the detailed implementation of a business-to-business relationship, it is not an interconnection agreement and need not be filed.

Again, Qwest's own arguments establish that McLeod Agreement No. 2 is an interconnection agreement that must be filed with the Board. As Qwest notes, these provisions are "integrally connected to how Qwest and a CLEC manage" their

interconnection issues. A plan for implementation and dispute resolution procedures are logical and necessary parts of a comprehensive interconnection agreement, and any CLEC is likely to need similar provisions in its interconnection agreement with Qwest. It may be that a particular CLEC will want to negotiate different arrangements, but each CLEC has a right to know of the procedures Qwest has agreed to in other agreements in order that the CLEC can determine, for itself, if it wants to opt into the same procedures. Qwest's argument would force every CLEC to negotiate these important provisions from a blank page, without knowing what Qwest has agreed to in the past. This interpretation would undermine the pick-and-choose and nondiscrimination features of the Act and should be rejected.

C. TENTATIVE CONCLUSIONS

Overall, it appears there are no material factual disputes regarding application of the definition of "interconnection agreement" delineated in this order to the agreements that Qwest has filed. Applying that definition, it appears the Covad Agreement and both McLeod agreements are interconnection agreements. If no material factual disputes are presented, then the Board can conclude that Qwest violated § 252 and 199 IAC 38.7(4) by failing to file these interconnection agreements in a timely manner.

Based on that conclusion, the Board can also find that Qwest violated a Board rule and, pursuant to Iowa Code § 476.51, the Board can give Qwest written notice,

by order, that it has violated 199 IAC 38.7(4). If Qwest violates that rule again, it will be subject to civil penalties pursuant to § 476.51.

Further, it is possible that Qwest has entered into more agreements which Qwest did not believe to be interconnection agreements, but which meet the definition of "interconnection agreement" as clarified by the Board in this order. The Board will allow Qwest 60 days to identify and file any other interconnection agreements that are effective in Iowa without subjecting itself to civil penalties.

The Board will make these findings as tentative conclusions, based upon the tentative conclusion that there are no material issues of adjudicative fact. Qwest will be given 20 days to request a hearing, if it believes there are such issues. Any request for hearing must specifically identify the material issues and explain, in reasonable detail, the effect that resolution of those issues would have on the Board's tentative conclusions.

OTHER ISSUES

A. AT&T's request for subpoena

Because the Board is ordering Qwest to file all of its unfiled interconnection agreements within 60 days of the date of this order, AT&T's request for a subpoena to discover what other agreements there may be is moot and will be denied.

For the future guidance of the parties, the Board notes that it typically uses orders, rather than subpoenas, to obtain information from public utilities. In fact, the Iowa Supreme Court has held that the legislative grant of subpoena power in

§§ 476.2 and 17A.13(1) does not limit the Board to using subpoenas to compel production of documents, see Iowa Power and Light Co. v. Iowa Utilities Board, 448 N.W.2d 468, 470 (Iowa 1989). The Board will issue agency subpoenas to parties upon request, as required by Iowa Code § 17A.13(1), but it does not normally rely upon subpoenas for its own information requirements.

B. Validity of non-filed agreements

In its initial brief, Qwest argues that the Board should not adopt an "overbroad application" of § 252 because it would "implicate the validity of any non-filed ILEC-CLEC agreements." (Initial Brief at page 14.) Qwest reasons that if the non-filed agreements, were required to be filed they would be valid only after approval by the Board. As a result, any contract provisions that should have been filed but were not "were never actually valid." Qwest argues that requiring that it file past agreements that were not filed would be contrary to the public interest and detrimental to the settled contractual expectations of both ILECs and CLECs.

Qwest's argument relies upon its past failure to comply with the statute and the rules as a justification for continued noncompliance. The possible consequences of non-filing are something that Qwest (and the other parties to the agreements) should have considered when it decided not to file these agreements; those possible consequences do not amount to a reason to adopt an overly narrow interpretation of the filing requirement for all future agreements. The Board must define "interconnection agreement" in a manner that is consistent with the nondiscrimination

and pick-and-choose provisions of the Act, not in a manner designed to minimize the consequences of Qwest's own decisions.

Moreover, it does not necessarily follow that the non-filed agreements are *void ab initio* in total. When the Act was passed, the FCC required the filing of pre-Act interconnection agreements as public documents so that they would be available for pick-and-choose purposes and in the interests of preventing unreasonable discrimination. That requirement did not render the pre-Act agreements void. While the circumstances are not identical, it appears that otherwise lawful provisions of these non-filed agreements could possibly be treated in the same manner.

C. Motion To Stay

The Board will deny Qwest's motion for a stay of these proceedings while the FCC considers Qwest's petition for declaratory ruling. Qwest's main justification for a stay is the claim that it might preserve the Board's resources, depending upon the action taken by the FCC, but the fact is that the Board has already expended the majority of the resources required to decide this matter, as described above. Moreover, the Board can now submit its order to the FCC to show the FCC how the Board's definition of "interconnection agreement" applies to the three agreements already filed in this docket.

CONCLUSION OF LAW

For purposes of this proceeding, the phrase "interconnection agreement" as used in 47 U.S.C. §§ 251(c) and 252(a) through (i) and 199 IAC 38.7(4) should be

defined to include, at a minimum, a negotiated or arbitrated contractual arrangement between an ILEC and a CLEC that is binding; relates to interconnection, services, or network elements, pursuant to § 251, or defines or affects the prospective interconnection relationship between two LECs. This definition includes any agreement modifying or amending any part of an existing interconnection agreement.

FINDINGS OF FACT

1. The Board tentatively finds the Covad Agreement, which includes Qwest's binding commitment to meet certain interconnection service quality standards specified therein, is an interconnection agreement for purposes of 47 U.S.C. §§251(c) and 252(a) through (i) and for purposes of 199 IAC 38.7(4).

2. The Board tentatively finds McLeod Agreement No. 1, which includes provisions setting interconnection rates and reciprocal compensation rates, is an interconnection agreement for purposes of 47 U.S.C. §§251(c) and 252(a) through (i) and for purposes of 199 IAC 38.7(4).

3. The Board tentatively finds McLeod Agreement No. 2, which includes provisions regarding implementation of interconnection agreements, regular meeting requirements concerning interconnection issues, and dispute resolution procedures for interconnection issues, is an interconnection agreement for purposes of 47 U.S.C. §§251(c) and 252(a) through (i) and for purposes of 199 IAC 38.7(4).

4. The Board tentatively finds that Qwest's failure to file with the Board the interconnection agreements identified in Findings of Fact Nos. 1 through 3 is a violation of 47 U.S.C. §§ 251(c) and 252(a) through (i) and 199 IAC 38.7(4).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Findings of Fact Nos. 1 through 4 are adopted as the tentative findings of the Board. If any party disagrees with the Board's tentative conclusions, that party can request a hearing to further explore the facts, but any such request for hearing must identify a disputed issue of material adjudicative fact and explain how that issue will best be resolved by means of a hearing. Any such request must be filed within 20 days of the date of this order. If the party desires a stay of any of the requirements of this order pending a ruling on the request for hearing, it should specifically request one. If no request for hearing is filed within 20 days of the date of this order, then the tentative findings set forth above will become the final, binding decision of the Board.

2. Qwest Corporation is hereby given written notice that it has violated Board rule 199 IAC 38.7(4) by its failure to file the interconnection agreements identified above and any other interconnection agreements that have effect in Iowa and that Qwest has entered into and failed to file. Qwest shall have 60 days from the date of this order to file any other non-filed interconnection agreements with the Board for public notice, review, and approval. Any future violation of rule

199 IAC 38.7(4) may subject Qwest to civil penalties pursuant to Iowa Code § 476.51.

3. The motion for subpoena filed in this docket by AT&T Communications of the Midwest, Inc., on April 23, 2002, is denied.

4. The motion to stay this docket filed by Qwest Corporation on May 10, 2002, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29th day of May, 2002.