

Touch America Says Qwest Not Complying With FCC Requirements, Asks Commission To Revisit U S West Merger and Divestiture Approvals

By Continuing to Provide Long-Distance Service in its Monopoly Region and Not Fully Divesting Its Long-Distance Business To Touch America As Ordered, Qwest Fails To Fulfill Federal Communications Commission (FCC) Requirements Covering Its Merger With U S West, Impairs Touch America's Ability To Serve Its Customers, And Violates Multiple Sections of Telecom Act

WASHINGTON, Feb. 12 /PRNewswire/ -- In a Federal Communications Commission (FCC) formal complaint filed late yesterday, Touch America, the national broadband network and services subsidiary of the Montana Power Company (NYSE: MTP), claimed Qwest Communications International has violated federal law and engaged in anticompetitive business practices by failing to comply with Commission orders covering Qwest's merger with U S West and the sale of Qwest's long-distance business to Touch America.

The filing challenges Qwest's compliance with its FCC Merger and Divestiture Orders and claims Qwest has violated or is presently violating Sections 201, 202 and Section 271 of the Telecommunications Act of 1996 - respectively, engaging in unreasonable practices, discriminatory activities and the overall failure of Qwest to fully divest its long-distance business and cease providing in-region long distance services. This is Touch America's second FCC complaint against Qwest.

Last week, Touch America told the Commission that Qwest's so-called "Capacity IRU" sales within its 14 state service territory (in-region) were in essence long-distance voice and data telecommunications services that specifically violate Section 271. Qwest is prohibited from marketing or selling long-distance services in-region until it complies with Section 271 and receives FCC approval.

The FCC required Qwest to sell its in-region long-distance business and related assets as a condition of the Commission's approval of Qwest's merger with U S West (Merger Order) in March 2000. To implement the federally mandated divestiture, Qwest and Touch America negotiated numerous agreements that detailed the requirements necessary for a complete and irrevocable divestiture that satisfied the requirements of Section 271.

The agreements called on Qwest to transfer customers and certain facilities to Touch America and to provide Touch America with access to the information and infrastructure Touch America needed to successfully serve transferred customers for a transitional period. The divestiture to Touch America, as embodied in the agreements and Qwest's representations, satisfied the Commission's concerns that Qwest intended to and would fully exit its in-region long-distance business prior to merging with U S West.

The proposed divestiture and related transaction agreements were submitted to and approved by the FCC in its Divestiture Order, and on June 30, 2000, Touch America purchased Qwest's in-region long-distance business for \$200 million.

"Since it purportedly exited the long-distance business, Qwest either has not provided or presently is not providing Touch America with the necessary access to transferred customer data and information, long-distance switches, or back office billing and provisioning information for Touch America to conduct a successful business," said Cort Freeman, Touch America's vice president, Corporate Communication. "We believe Qwest isn't living up to the terms and conditions it agreed to in the Commission's Divestiture and Merger Orders.

"Once proven, the result will be that Qwest has failed to fully divest its long-distance business as ordered by the FCC, has engaged in unreasonable,

anticompetitive and discriminatory practices, and continues to market and transport long-distance voice and data within its regulated service territory, all in violation of the Telecom Act and the FCC's own orders," he added. "Despite a concerted effort to settle its disputes with Qwest, Touch America now is reconciled to the fact the Commission must be informed of Qwest's inappropriate and illegal post-divestiture, post-merger actions.

"In our opinion, Qwest's actions provide a significant basis for the FCC to act on its warning to Qwest at the time the merger was approved that, if Qwest completed anything less than a full divestiture or continues to provide prohibited services, the FCC would 'revisit' its approval of Qwest's merger with US West. We believe our complaint, taken as a whole, will convince the FCC that a comprehensive review of the Merger and Divestiture is required."

Touch America claims that Qwest's failure to completely divest its long-distance business has, among other things, allowed Qwest at times or presently to:

- Prevent Touch America from assuming control of all customers, keep some customers and related in-region business that should have been transferred, and withhold information or provide incomplete or wrong information, preventing Touch America from properly serving customers;
- Deny Touch America proper access to and full use (100% functionality) of four in-region major switching facilities, and retaining use of those facilities for itself;
- Continue with bad billing practices that failed to provide documented and accurate charges to Touch America, that overcharged Touch America for some services, and that caused Touch America to spend significant time and money to figure what costs it should be paying and what revenues it should be receiving;
- Continue to derive revenues from transferred customers; and
- Position itself in the public's perception as being able to provide long-distance services before receiving Section 271 and FCC approvals, which give it an additional, but also anticompetitive, business advantage for a market-dominant monopoly that has yet to open up its system to local competition.

"If Qwest isn't complying with the FCC's Merger and Divestiture Orders now, which we assert is happening, what can be expected if Qwest receives Section 271 approval and reenters the long-distance business in-region?" Freeman said. "Our experience suggests you would have a market dominant monopoly competing for long-distance business in-region, while using similar tactics to those encountered by Touch America to prevent local exchange competitors from using Qwest's regional phone system to become meaningful players in the local phone market Qwest now controls."

About Touch America

Touch America is a national fiber-optic network and products and services company. Branded TOUCHAMERICA, the company will transition from a wholly owned telecommunications subsidiary of the Montana Power Company (NYSE: MTP) to a stand-alone telecom corporation, Touch America Holdings, Inc., this year. More information can be found at <http://www.tamerica.com>.

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