AT&T

Gary B. Witt
Senior Attorney

Room 1575
1875 Lawrence Street
Denver, CO 80202
303 298-6163

February 27, 2001

Judi K. Cooper
Executive Secretary
Iowa Utilities Board
350 Maple Avenue
Des Moines, IA 50319

Dear Ms. Cooper:

AT&T is extremely concerned with recent revelations that Qwest may have entered into a series of secret agreements granting preferential treatment to some CLECs in Minnesota.[1] In this regard, AT&T would like to take this opportunity to request that the Iowa Utilities Board initiate an investigation into Qwest's business practices in Iowa to determine whether the same or a similar practice is occurring here.

Following a six month investigation into potential anticompetitive behavior by Qwest, the Minnesota Department of Commerce on February 14, 2002, filed a complaint against Qwest alleging it has entered into a series of secret agreements with various CLECs to provide preferential treatment for those CLECs with respect to interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of way, reciprocal compensation, and collocation.[2] These agreements have been characterized as being amendments to existing interconnection agreements. As the Board is well aware, Qwest is under a legal obligation to submit agreements of this nature to the state commission for approval, to make all such agreements public, and to provide the same services to other CLECs on a non-discriminatory basis.[3] The Minnesota Department of Commerce asserts in its complaint that Qwest did not obtain the required commission approval for these agreements, that Qwest has not made the agreements public as required, and that Qwest is not providing the same terms and conditions to other CLECs on a non-discriminatory basis.

[1] See attached newspaper articles (Attachment A).
[2] *In the Matter of the Complaint of the Minnesota Department of Commerce against Qwest Corporation*, before the Minnesota Public Utilities Commission, Docket No. P-421/DI-01-814, filed February 14, 2002. See Complaint, at paras. 17-25 (Attachment B).
[3] See 47 U.S.C. §252(a)-(i). See also 47 U.S.C. §251(c).

The Minnesota Department of Commerce is seeking civil penalties of between $50 million and $200 million.

Qwest may be entering into these agreements to silence opposition to its §271 application there.

If the existence of these secret Minnesota agreements is established, it will demonstrate a pattern of behavior on Qwest's part, in that Qwest will have been shown to have entered a series of such agreements, and these agreements are therefore not merely an isolated instance. In addition, because of the multi-state operations of Qwest and the various CLECs involved, it appears likely at this point that the practice potentially crosses state boundaries.

AT&T urges the Board to take a close look at the attached Minnesota complaint, and to initiate a comprehensive investigation of Qwest's business practices, in order to expose any secret agreements which may have been executed in a similar fashion to those alleged to have occurred in Minnesota.

AT&T believes that the practices alleged in the Minnesota complaint may not be limited solely to Minnesota, and that they are serious enough to merit, at a minimum, further investigation into Qwest's business practices in Iowa. Indeed, these allegations—which have resulted from a long and careful examination of Qwest's business practices by an independent regulatory body—show clearly that there is good cause to believe that similar agreements exist here, and must be examined more closely.

Very truly yours,

Gary B. Witt

Gary B. Witt

Attachments (2)

cc: OCA - Alice Hyde

Attachment A

Subject: FW: Big news in MN

State regulators say Qwest made secret agreements with competitors
Steve Alexander

Star Tribune

Published Feb 15, 2002

State regulators Thursday accused Qwest Communications of breaking state and federal laws by restricting competition in the local telephone market. They sought civil penalties against Qwest that could range from $50 million to $200 million.
In a filing with the Minnesota Public Utilities Commission (PUC), the Minnesota Department of Commerce accused Qwest of restricting competition by secretly making agreements with some companies that worked to the disadvantage of others. Qwest is the largest phone company in Minnesota, controlling 2 million of the 2.7 million telephone lines in the state.

If true, such secret agreements would violate state and federal laws that require Qwest to be reasonable and non-discriminatory in agreements with other local phone competitors. Filing the agreements with the PUC is supposed :o ensure that fairness.

The agreements in question cover the way competitors pay Qwest, connect to Qwest's network, resell Qwest elephone lines to customers and enable customers to keep their old telephone numbers when they switch local hone companies.
Qwest officials denied any wrongdoing. Chuck Ward, Qwest's vice president for policy and law in Denver, said Qwest has negotiated more than 150 agreements with competitors in Minnesota, and "our belief is that the nterconnection agreements have been filed with the PUC in Minnesota."

lowever, after an investigation of more than six months, the Commerce Department said it had learned that "the ecret agreements either change or add to the approved agreements" and that they have not been submitted to ie PUC for approval.

ony Mendoza, Commerce Department deputy commissioner for telecommunications, said that "Qwest played ivorites with some competitors in the market, leaving others out in the cold."

west "entered into legal contracts with these [competing] companies to provide certain interconnection-type ervices that are better than what was available to other carriers," Mendoza said.

ecause of confidentiality rules governing Qwest trade secrets, Mendoza said he could not reveal the names of e companies with which Qwest is alleged to have made secret agreements, or the terms of those agreements. e said the Commerce Department is asking the PUC to make that information public and to hold a hearing on e allegations within 30 days.

he PUC finds that violations occurred, it could fine Qwest based on the number of offenses and the time period ring which they happened, Mendoza said. The maximum amount the PUC could fine Qwest is $56.2 million to 02.5 million. If Qwest were fined by the PUC, it would be the first time any penalties have been assessed under 1999 state law that prohibits anticompetitive conduct by Qwest.
der state law, only Qwest would be financially liable for not disclosing the agreements because it is the only mpany that is required to disclose them to the PUC, Mendoza said. Companies that made the agreements with est would not face any penalties, he said.

in interview, Mendoza questioned whether Qwest was trying to use sweetheart agreements with some local phone competitors to silence its critics at state regulatory hearings.

e noticed conspicuous behavior. Some of the competitors that had been critics of Qwest were no longer wing up to talk about Qwest service quality" at PUC hearings, Mendoza said.

rd said that if competing telephone companies don't have any complaints about Qwest, "then I think we're ig a good job."

The allegation about silencing critics also comes at a time when Qwest is trying to win PUC approval to enter the long-distance telephone market in Minnesota. Qwest has been barred by law from offering long-distance in the 14-state region where it offers local telephone service. But it can petition those individual states and the Federal Communications Commission to let it offer long-distance if it can show that it has competition for local service and meets some other conditions.

Ward said Qwest is not as far along in its efforts to enter the long-distance business in Minnesota as it is in other states, largely because regulatory review here has been slower.

But AT&T, a Qwest competitor in the local business telephone market, drew a connection between the Commerce Department allegations and Qwest's bid to enter the long-distance market in its 14-state local-service territory.

"We've had the sense, based on our conversations with other competitors, that Qwest may be entering into agreements with other carriers that contain terms that prefer one carrier over another," said Mary Tribby, Denver-based chief regulatory counsel for AT&T's western region that includes Minnesota. "We're also concerned that companies entering into these agreements are being silenced in regulatory proceedings as part of the agreements."

Bill Myers, a Qwest spokesman in Denver, said AT&T "has an interest in frustrating our efforts to get into the long-distance business."

In an unrelated development, Qwest's commercial paper rating was cut one level by Standard & Poor's, which cited debt of $25 billion at the phone company. S&P cut its short-term rating to "A3" from "A2," while dropping the long-term credit rating to "BBB," two levels above junk, from "BBB+." S&P has a negative outlook.

"The downgrade is based on Qwest's more limited financial flexibility and near-term liquidity concerns," S&P analyst Greg Zappin said in a prepared statement. The loss of access to the commercial-paper market was also a factor, he said.
-- Bloomberg News contributed to this report.

-- Steve Alexander is at alex@startribune.com .

Subject: FW: Article from deseretnews.com

rhe following story appeared on deseretnews.com on February 19, 2002.

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Ieadline: Minnesota accuses Qwest of secret deals

;ubhead: Communications firm could face $200 million fine

uthor: Associated Press

T. PAUL, Minn. -- The Minnesota Department of Commerce has accused Qwest ommunications International Inc. of violating state and federal law by entering nto secret agreements with competitors.

f the state Public Utilities Commission finds that Qwest broke the law, the enver-based company could face civil penalties of up to $202.5 million epending on the number of claims.

vest vice president Chuck Ward said the company is reviewing the complaint.

'o assert there's secret things going on I don't think is productive," Ward iid.

Commerce Department investigation found that Qwest entered into numerous cret agreements with rival local phone companies that violate Qwest's ligations under the law. The agreements include issues of interconnection, cess to network elements, resale, number portability, access to rights-of-way d compensation.

est, as the local exchange carrier in Minnesota, is required by federal law to ovide other carriers reasonable access to its network.

ny interconnection agreements between Qwest and the other carriers have eviously been approved by state regulators. But the alleged secret agreements either change or add to those were not submitted for state approval.

est has provided details of the agreements to commerce officials, but the mpany has designated each agreement as a "trade secret," which prevents public sclosure.

vest's behavior is blatantly anticompetitive," commerce commissioner Jim nstein said. "Qwest has entered into these secret agreements repeatedly and y are in force today. There is zero benefit to Minnesota telephone customers n Qwest is in the business of limiting competition."

. Ward said the company has made 150 interconnection agreements with petitors in Minnesota.

merce officials also have asked the Public Utilities Commission to require st to make the terms and conditions of the agreements publicly available to er local competitors.

st controls about 2 million of the 2.7 million telephone lines in nesota.

company likewise controls about 90 percent of the lines in Utah, and when Legislature reconvenes next week it may take up a bill aimed at keeping st from shutting out competition in the Utah local-service market.

10, yet to be discussed by the House Public Utilities and Technology Standing

:ommittee, would impose stronger fines on Qwest for anticompetitive behavior. A :hird violation would start a process that could lead to a separation of the :ompany's retail and wholesale operations.

'roponents, including AT&T and the bill's sponsor, House Majority Leader Kevin íarn, R-Layton, say 1995 state and 1996 federal telecommunication measures have ailed to provide a framework for local-service competition.

Subject: FW: Qwest secret deals

Qwest accused of secret deals

By The Associated Press

The Associated Press
Saturday, February 16, 2002 - The Minnesota Department of Commerce has accused Qwest Communications International Inc. of violating state and federal law by entering into secret agreements with competitors.

The agency filed a complaint Thursday with the Minnesota Public Utilities Commission.

If the PUC finds Qwest broke the law, the Denver-based company could face civil penalties of between $56.2 million and $202.5 million, based on the number of claims.

Chuck Ward, vice president of policy and law for Qwest, said the company is reviewing the complaint and will file an answer soon. "To assert there's secret things going on I don't think is productive," Ward said.

A Department of Commerce investigation determined Qwest entered into numerous secret agreements with rival local phone companies that violate Qwest's obligations under the law. The agreements include issues of interconnection, access to network elements, resale, number portability, access to rights-of-way and compensation.

Qwest, as the incumbent local exchange carrier in Minnesota, is required by federal law to provide other carriers with the ability to connect to its network based on agreements that are reasonable and non-discriminatory.

Many interconnection agreements between Qwest and the other carriers have previously been approved by the PUC. But the secret agreements either change or add to those and weren't submitted to the PUC for approval.

Qwest has provided details of the agreements to commerce officials, but the company has designated each agreement as "trade secret," which prevents public disclosure.

"Qwest's behavior is blatantly anti-competitive," said Commerce Commissioner Jim Bernstein. "Qwest has entered into these secret agreements repeatedly and they are in force today. There is no benefit to Minnesota telephone customers when Qwest is in the business of limiting competition." Qwest's Ward said the company has made 150 interconnection agreements with competitors in Minnesota.

Commerce officials also have asked the PUC to require Qwest to make the terms and conditions of the agreements publicly available to other local competitors.

Qwest controls about 2 million of the 2.7 million telephone lines in Minnesota.

THE DENVER POST / NATION

Sunday, February 17, 2002

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Qwest deals with rivals scrutinized

By Kris Hudson
Denver Post Business Writer

The Minnesota Department of Commerce has accused Qwest of breaking state and federal law by cutting secret deals with some of its competitors to the detriment of others.

In a complaint filed with the state's Public Utilities Commission, the state commerce department alleges Qwest acted in an anti-competitive manner by cinching the deals without gaining the PUC's approval. Federal law requires Baby Bells such as Qwest to provide all competitors equal access to its phone lines on public terms.

The complaint demands that Qwest make the secret deals public and allow any competitor to take advantage of their terms. It also seeks civil penalties of $50 million to $200 million, The Associated Press reported.

The deals, called interconnection agreements, set the prices and terms for the two companies to connect their communications networks and hand off calls. All are required to be approved by the PUC so Qwest's competitors can ensure others aren't getting favorable terms.

"By entering into the secret agreements, Qwest is providing discriminatory treatment in favor of the (competitors) that are party to those agreements and to the detriment of (competitors) that are not," the complaint reads.

Qwest is looking into the complaint.

"We're just in the process of looking at what they've filed," said Steve Davis, Qwest's senior vice president of policy and law. "We have filed literally hundreds of interconnection agreements across the region since 1996. We're looking at the ones they think we should have filed and figuring out if there's merit to what they said. And if they need to be filed, we'll file them."

Colorado utilities officials and consumer advocates on Friday declined to comment on the Minnesota complaint before learning more about it.

Qwest's Davis said the complaint should have no effect on Qwest's push to gain federal and state approval to sell long-distance service in the former U S West's 14-state territory. Qwest's archrival, AT&T Corp., wasn't so sure.

"We have been suspicious for quite some time that Qwest has been entering into sweetheart deals with carriers that prefer one carrier over another," said Mary Tribby, AT&T's chief regulatory counsel. "That's a violation of their obligations to treat all carriers equally."

Tribby said AT&T intends to urge utilities commissions in each of the 13 other U S West states to look into the Minnesota allegations. "I don't think it's isolated to Minnesota," she said.

The Telecom Act of 1996 mandates that Baby Bells must prove they allow competitors easy and efficient access to their phone lines so the competitors can deliver services over them. Once a Baby Bell proves it allows competition, state and federal regulators may grant it permission to sell long-distance in a given state.

Qwest cannot sell long distance in any of the 14 U S West states, but it is nearing the end of its testing and review process to do so.

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Page 1 of 1 (RMRM11DH)

Wed February 20, 2002
Appears On Page 4B
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Rocky Mountain News
Denver, CO

AT&T wants state PUC to scrutinize Qwest deals for possible wrongdoing

Allegations of secret, improper agreements in Minnesota spur call

By Jeff Smith
News Staff Writer

AT&T said it plans to ask regulators in Colorado to investigate whether Qwest Communications International Inc. has made agreements with local phone wholesalers that illegally restrict competition.

The issue came up last week when Minnesota regulators accused Qwest of secretly making such agreements with wholesalers that connect to Qwest's network to resell local phone service.

"We are going to talk to regulators in all of Qwest's states including Colorado to encourage them to look into similar allegations," said Mary Tribby, AT&T chief regulatory counsel in Denver. "We have no reason to believe that this is limited to Minnesota. Companies suspected to have entered into secret deals likely operate in other states as well."

State regulators and watchdogs said Tuesday that they don't have any evidence of such deals.

Tribby said Qwest is required by the Telecommunications Act of 1996 to treat all carriers in a nondiscriminatory fashion. She said she is worried the alleged deals might "silence those partners from participating in regulatory hearings" concerning Qwest's effort to re-enter long-distance in its 14-state Western region.

Terry Bote, spokesman of the Colorado Public Utilities Commission, said Tuesday the state hasn't uncovered similar evidence and hasn't yet been contacted by AT&T.

Hearings on Qwest's re-entry into long-distance in Colorado take place next week.

Ken Reif, director of the Colorado Office of Consumer Counsel, a utility watchdog, said Tuesday that he also isn't aware of improper deals by Qwest. But he said that "we wouldn't know," since details of those agreements aren't public.

Steve Davis, Qwest's senior vice president of policy and law, said Tuesday that Qwest has entered into hundreds of interconnection agreements across the region and that it is common for such agreements, or at least portions, to be confidential.

"There aren't any allegations that the deals are illegal, just they should have been publicly filed," Davis said. "We're looking at that. If something should be filed, we'll file . . . The only question here is whether we need to file some portion of those agreements."

Davis said he also considers it interesting that AT&T is so con- [illegible] about deals that much smaller companies have signed.

NewsEdge Insight

NewsEdge Corporation

AT&T TO ASK QWEST STATES TO INVESTIGATE DEALS WITH CLECs

23:00:57, 20 February 2002

AT&T said it planned to ask Colo. PUC and regulators in other Qwest states to investigate whether Qwest had made illegal secret agreements with selected CLECs that provided favored carriers with rates and terms not available to other competitors. Colo. is Qwest's hq state. AT&T was reacting to complaint against Qwest filed with Minn. PUC last week by Telecom Div. of Minn. Dept. of Commerce on behalf of state's retail telecom ratepayers. Minn. complaint alleged Qwest made secret amendments to interconnection contracts with selected CLECs to mute their opposition to Qwest long distance entry and other Qwest regulatory initiatives. It charged that Qwest and "partner" CLECs might be concealing favorable terms so other CLECs couldn't opt into them. Minn. complaint didn't name specific CLECs or deals. Qwest has denied Minn. charges.

AT&T said it had "no reason to believe that this is limited" to Minn., and Qwest might seek to make secret deals with selected CLECs throughout its 14-state region to "silence those partners from participating in regulatory hearings" on its Sec. 271 petitions. Colo. PUC hasn't received petition from AT&T, but spokesman said agency hadn't seen any evidence of secret Qwest dealmaking to unlawfully influence CLEC opponents of its regulatory initiatives. Similarly, Colo. Office of Consumer Counsel, state's utility watchdog agency, isn't aware of any improper deals between Qwest and CLECs, but spokesman said agency might not know of such dealings because details wouldn't be public. Consumer advocacy agencies in some other Qwest states were either unaware of Minn. complaint against Qwest or didn't know enough about situation to comment.

Qwest said it had entered into hundreds of interconnection agreements with CLECs across its region and it was common for proprietary information in some portions of interconnection contracts to be kept confidential. It also denied allegations that its interconnection deals with CLECs in Colo. or other states of its region were illegal. Only question, Qwest said, is whether some contract terms should have been filed publicly. Spokesman said his company was looking into that question and if something should be filed publicly, it would do so. -- Herb Kirchhoff

CDviaNewsEDGE

Received by NewsEdge Insight: 02/20/2002 23:00:57

Attachment B

PUBLIC DOCUMENT - Trade Secret Data Has Been Excised

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147

Greg Scott	**Chair**
Edward Garvey	**Commissioner**
Marshall Johnson	**Commissioner**
LeRoy Koppendrayer	**Commissioner**
Phyllis A. Reha	**Commissioner**

In the Matter of the Complaint of the)
Minnesota Department of Commerce) Docket No. P-421/DI-01-814
Against Qwest Corporation)

VERIFIED COMPLAINT

Expedited Proceeding Requested

Temporary Relief Requested

The Minnesota Department of Commerce ("Department") brings this Verified Complaint before the Minnesota Public Utilities Commission (the "Commission") against Qwest Corporation ("Qwest"), seeking relief for Qwest's violation of its obligations under state and federal law. Qwest's unlawful conduct has hindered and continues to hinder competition in the local exchange markets in Minnesota. In support of this Complaint, the Department alleges:

PARTIES

1. Under Minn. Stat. § 216A.07, the Department is charged with investigating and enforcing Chapter 237 and Commission orders made pursuant to that chapter. The Department's local address in Minnesota is Golden Rule Building, 85 East 7th Place, Suite 500, St. Paul, MN 55155.

2. The Department is represented in this proceeding by its attorneys:

Mike Hatch
Attorney General
State of Minnesota

Steven H. Alpert
Assistant Attorney General
525 Park Street, #200
St. Paul, Minnesota 55103-2106
(651) 296-3258 (telephone)
(651) 282-2525 (TTY)

3. Respondent Qwest is a Delaware corporation with its principal place of business in Denver, Colorado, with offices in Minnesota at 200 South Fifth Street, Minneapolis, Minnesota. Qwest provides switched local exchange service in a number of Minnesota exchanges, and is regulated by the Commission under Minn. Stat. ch. 237 as a "telephone company." Minn. Stat. § 237.01, subd. 2. As a major provider of local exchange service in Minnesota, Qwest controls approximately two million out of the approximately two million seven hundred thousand telephone lines in Minnesota.

4. The Department believes that Qwest is represented in Minnesota by its attorney:

Jason Topp
Qwest Corporation
Law Department
200 South 5th Street, Room 395
Minneapolis, MN 55402
(612) 672-8905 (telephone)
(612) 672-8911 (facsimile)

JURISDICTION

5. The Department's investigation into certain agreements entered into by Qwest, and described more particularly below, establishes that Qwest's behavior violates federal and state law.

6. The Commission has jurisdiction over this Complaint pursuant to 47 U.S.C. §§ 252(e) (authority of state commissions to enforce interconnection agreements), 251(c)(2) (duty of incumbent carriers to interconnect with CLECs); Minn. Stat. §§ 237.081 (Commission investigations); and, 237.462 (competitive enforcement).

OVERVIEW

Qwest's Legal Obligations

7. Qwest is the successor in interest to U S WEST Communications, Inc. ("U S WEST") At all times relevant to this complaint, either U S WEST or its successor Qwest operated as an incumbent local exchange carrier in Minnesota.

8. The Department is informed and believes and on this basis alleges that, upon its merger with U S WEST, Qwest assumed the obligations and the benefits of every agreement described in this complaint to which U S WEST was a party. For purposes of this complaint, both Qwest and U S WEST are referred to as Qwest.

9. As an incumbent local exchange carrier, Qwest has a number of legal duties set forth in 47 U.S.C. § 251(c). Among those duties are:

a. The duty to negotiate in good faith the particular terms and conditions of agreements for interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and collocation. 47 U.S.C. § 252(c)(1).

b. The duty to provide interconnection with Qwest's network on rates, terms and conditions that are just, reasonable and non-discriminatory. 47 U.S.C. § 251(c)(2)(D).

c. The duty to provide nondiscriminatory access to network elements on an unbundled basis on rates, terms and conditions that are just, reasonable and nondiscriminatory. 47 U.S.C. § 251(c)(3).

10. Pursuant to 47 U.S.C. § 252(a), Qwest may negotiate the terms of any agreement to provide interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and collocation with the CLEC requesting such items or services. The agreement entered into by Qwest "shall be submitted to the State commission under subsection (e) of this section." 47 U.S.C. § 252(a)(1).

11. Qwest and numerous CLECs are parties to Interconnection Agreements ("ICAs") which have been approved at various times by this Commission pursuant to 47 U.S.C. § 252(e).

12. Qwest is required to make available any interconnection, service, or network element provided under an agreement approved by this Commission pursuant to 47 U.S.C. § 252(e) to which Qwest is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. 47 U.S.C. § 252(i). This requirement is also known as the "most favored nation" or "pick and choose" rule.

13. In the *Local Competition First Report and Order*, the FCC explained the importance of the filing requirement in 47 U.S.C. § 252(a)(1) and its relation with 47 U.S.C. § 252(i):

> As a matter of policy, moreover, 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. In particular, preexisting agreements may include provisions that violate or are inconsistent with the pro-competitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). 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). 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.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, para. 167 (1996) (emphasis in original).

The Secret Agreements

14. The Department is conducting an investigation into potential anti-competitive conduct by Qwest, in part to determine whether Qwest has engaged in a practice of entering into secret agreements with some CLECs that violate Qwest's obligations under 47 U.S.C. § 251(c) and/or 47 U.S.C. § 252(a)(1).

15. On June 20, 2001 the Department sent an information request to Qwest asking it to produce every agreement with a CLEC not filed with the Commission entered into by Qwest over the last five years. After discussions with Qwest, the scope of Qwest's production was narrowed to agreements entered into on or after January 1, 2000.

16. The facts set forth below have been determined by the Department based on the agreements and information provided by Qwest in Docket P421/DI-01-814.

17. The Department's investigation revealed that Qwest has entered into numerous secret agreements with CLECs to provide interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation and/or collocation to the CLEC (the "Secret Agreements"). The Secret Agreements are discussed in more detail below and attached as exhibits to this complaint.

18. The Secret Agreements either modify or augment the terms and conditions set forth in the ICAs between Qwest and the CLECs that are party to them.

19. 47 U.S.C. § 242(a)(1) requires that these Secret Agreements be submitted for Commission approval pursuant to 47 U.S.C. § 252(e).

20. Qwest has not submitted the Secret Agreements for Commission approval pursuant to 47 U.S.C. § 252(e).

21. In addition to failing to submit the Secret Agreements to this Commission for approval, Qwest included confidentiality provisions in the agreements that, in many cases, precluded access to the Secret Agreements by other CLECs, the Department, or this Commission to the Secret Agreements.

22. The Department is informed and believes and on this basis alleges that the terms of these Secret Agreements described below do not appear in any ICAs approved by the Commission under 47 U.S.C. § 252(e), to which Qwest is a party.

23. As a result, the terms of these Secret Agreements described below remain unknown to the CLECs that are not party to these agreements and are not available for adoption by other CLECs pursuant to 47 U.S.C. § 252(i).

24. By entering into the Secret Agreements, Qwest is providing discriminatory treatment in favor of the CLECs that are party to these agreements and to the detriment of CLECs that are not.

25. Because these Secret Agreements either modify or create entirely new terms and conditions of interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation and/or collocation, Qwest's failure to make these terms generally available to all CLECs violates 47 U.S.C. § 251(c).

26. As set forth in greater detail below, the ongoing and repeated behavior of Qwest in entering into these secret agreements was, and is, anti-competitive and in violation of federal and state law.

SPECIFIC FACTUAL ALLEGATIONS

[TRADE SECRET MATERIAL BEGINS

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TRADE SECRET DATA ENDS]

REQUEST FOR EXPEDITED PROCEEDINGS

252. Qwest's continuing failure to comply with its obligations under state and federal law warrants expedited proceedings, temporary relief and penalties available pursuant to Minn. Stat. § 237.462, which authorizes the Commission to conduct expedited proceedings, impose temporary relief and impose penalties to remedy violations of interconnection agreements and incumbent local exchange carrier obligations under Section 251 of the Act and Minnesota law.

253. Pursuant to Minn. Stat. § 237.462 subd. 6, the Department requests that the Commission conduct an expedited proceeding to resolve this Complaint.

254. Qwest's conduct has inhibited and/or limited CLECs in their ability to compete effectively in Minnesota markets, including the ability to compete in the Minnesota local exchange markets.

255. As a result of Qwest's conduct, Minnesota's end user customers have been denied the benefits of potentially increased competition.

256. Qwest's conduct, as described above, is harmful to the public interest and the public is being denied the benefits of competition, including lower prices and diversity of telecommunications services, contrary to public policy favoring competition. Expedited resolution of this matter will advance the development of competition and, therefore, advance the public interest.

257. Carriers have been hindered in their ability to compete in the local exchange market in Minnesota as a result of Qwest's unlawful behavior.

258. Through such behavior, Qwest benefits by the retention of its dominance over the local exchange markets in Minnesota.

259. Accordingly, the Department requests that the Commission resolve this Complaint as soon as possible, and in no event, no more than 60 days from today.

REQUEST FOR TEMPORARY RELIEF

260. Minn. Stat. § 237.462, subd. 7 provides for temporary relief pending dispute resolution.

261. Based on the facts as pleaded, the Department is likely to succeed on the merits. State and federal law requires Qwest to submit agreements setting forth terms and conditions of

interconnection to this Commission for review and approval and/or to refrain from offering terms and conditions of interconnection in a discriminatory manner.

262. An order for temporary relief is necessary to protect the public's interest in fair and reasonable competition. Despite clear legal obligations to provide non-discriminatory service, and to do so expeditiously, Qwest has refused to comply with the law. Unless the Commission orders Qwest immediately to submit to the Commission for approval those portions of the Secret Agreements that relate to terms and conditions of interconnection, Qwest will continue to provide access to its network and services in a discriminatory and unlawful manner.

263. Without immediate relief, Qwest's secretive tactics will achieve Qwest's goal of limiting competition to itself and, to a lesser degree, some of its wholesale customers of choice. Thus the Act's and this Commission's goal of bringing local exchange competition to the consumers of Minnesota will be further hindered.

264. The Department's proposal to make all terms and conditions of interconnection available to all CLECs in a non-discriminatory manner is technically feasible. Qwest has provided the Department with no evidence to the contrary.

265. Accordingly, under Minn. Stat. § 237.462, subd. 7, the Department hereby requests that the Commission order Qwest immediately to make any and all of the specified terms or conditions of interconnection or service public, and immediately available to any other CLEC who wishes to adopt said provision(s).

REQUEST FOR PENALTIES

266. Through its conduct as described above, Qwest has willfully refused to comply with its obligations under state and federal law.

267. By its delay in submitting these agreements to this Commission for approval and its refusal to provide non-discriminatory access to services, Qwest has willfully hindered competition in Minnesota.

268. According to Qwest's website, Qwest Communications International, Inc., Qwest Corporation's parent, reported annual revenues of over $20 billion and assets of over $74 billion for the year 2001. With these revenues and assets, Qwest Corporation and its parent have the financial ability to pay any penalty this Commission may impose in this proceeding. The Department asks the Commission to impose the maximum penalty for each violation under the statute.

RELIEF REQUESTED

Wherefore, the Department requests that the Commission:

269. Pursuant to Minn. Stat. § 237.462, order an expedited hearing to be held before this Commission.

270. Grant the Department temporary relief by making the relevant portions of the contracts public and directing Qwest to immediately provide all requesting carriers the opportunity to pick and choose any of the terms and conditions contained therein.

271. Pursuant to Minn. Stat. § 237.462, make a finding that for each of the contracts described in the Complaint, that Qwest acted in violation of state and/or federal law;

272. Declare that each of Qwest's violations of law were in bad faith and anti-competitive;

273. Pursuant to Minn. Stat. § 237.462, subd. 2, impose penalties on Qwest in the amount of $10,000 per day for each of Qwest's prior failure, and for each day of its continuing failure to comply with the requirements of state or federal law.

274. Grant such other and further relief as the Commission may deem just and reasonable.

Dated: February ___, 2002

Respectfully submitted,

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