

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Ellen Gavin	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Complaint of the  
Minnesota Department of Commerce Against  
Qwest Corporation Regarding Unfiled  
Agreements

ISSUE DATE: December 18, 2002

DOCKET NO. P-421/C-02-197

ORDER REQUIRING PLAN AND  
AUTHORIZING COMMENTS

**PROCEDURAL HISTORY**

On February 14, 2002, the Commission received a complaint against Qwest Corporation filed by the Minnesota Department of Commerce (the Department) pursuant to Minn. Stat. § 237.462. The complaint alleged that Qwest, in neglecting to make public and seek Commission approval for eleven interconnection agreements with various competing local exchange companies (CLECs), has acted in a discriminatory and anti-competitive manner. The complaint was ultimately amended to include a twelfth agreement.

On March 12, 2002, the Commission issued its NOTICE AND ORDER FOR HEARING, referring the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding.

On September 20, 2002, the Administrative Law Judge (ALJ) submitted his *Findings of Fact, Conclusions, Recommendation and Memorandum* (ALJ Report) to the Commission.

On November 1, 2002, the Commission issued its ORDER ADOPTING ALJ'S REPORT AND ESTABLISHING COMMENT PERIOD REGARDING REMEDIES. The Commission found that Qwest knowingly and intentionally violated federal and state law and established a comment period to address possible remedies.

On November 8, 2002, the Commission received comments from AT&T Communications of the Midwest, Onvoy, Inc., the CLEC Coalition<sup>1</sup>, New Access, MCI WorldCom, the Department, Qwest, and the Department of Administration.

The Commission met on November 19, 2002 to consider this matter.

### **FINDINGS AND CONCLUSIONS**

After reviewing the parties' November 8, 2002 filings and hearing the oral comments of the parties and other interested persons at the November 19, 2002 meeting, the Commission finds that its decision will be assisted by a more fully developed record regarding potential remedial measures for the circumstances found by the Commission in its November 1, 2002 Order.

Accordingly and in the context of the Commission's November 1, 2002 Order, the Commission will direct Qwest to file a plan to further competition in Minnesota, within 30 days of the Commission's November 19 meeting, as specified in more detail in the Order Paragraphs.

Thereafter, parties will have 30 days to file comments on Qwest's filing.

### **ORDER**

1. Within 30 days of the Commission's November 19, 2002 meeting (i.e., on or before December 19, 2002), Qwest shall file with the Commission and serve upon the parties plans to further competition in Minnesota. The filing shall present at least two approaches:

Approach A: addressing the proposal by the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed November 8, 2002 in this matter plus 1) the pick and choose issue, i.e. how CLECs will be able to adopt from among the unfiled agreements, whether or not these agreements have been terminated, and 2) a fine of some appropriate size; and

Approach B: assuming the Commission orders a \$75 million fine with \$65 million stayed if Qwest's plan satisfactorily addresses a number of issues including the following:

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<sup>1</sup> The CLEC Coalition is made up of the following companies: Ace Telephone Association, BEVCOMM, Inc., Encore Communications, HomeTown Solutions, LLC, Hutchinson Telecommunications, Inc., Integra Telecom of Minnesota, Inc., Mainstreet Communications, LLC, NorthStar Access LLC, Otter Tail Telecom, LLC, Paul Bunyan Rural Telephone Cooperative, Tekstar Communications, Inc., Unitel Communications, U.S. Link and VAL-ED d/b/a 702.

- 1) how CLECs would pick and choose among the interconnection agreement provisions, whether terminated or not, that should have been filed but were not;
  - 2) how to remedy the past violations so that, if a CLEC chose that remedy, it would be precluded from seeking further damages;
  - 3) Qwest's point of view on using benchmark standards in the wholesale service quality docket;
  - 4) changes in Qwest's management in Minnesota including but not limited to establishing a locally-based contact person with corporate authority to make decisions regarding matters affecting CLECs in Minnesota;
  - 5) issues identified by the CLEC Coalition, including:
    - the Feature Group D toll carrier issue;
    - the one-year fresh look on the termination of liability assessments (TLAs) issue;
    - the migration without disconnection issue;
    - the voicemail for resale by all issue; and
    - the customized routing issue; and
  - 6) the proposal by the Residential Utilities and Small Business Division of the Office of the Attorney General (RUD-OAG).
2. The parties shall have 30 days following Qwest's filing to file comments on Qwest's plan.
  3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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