

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of an Investigation Regarding  
Qwest's Compliance with Section 271 of the  
Telecommunications Act of 1996 with  
Respect to the Provisions of InterLATA  
Services Originating in Minnesota

PUC Docket No. P-421/CI-96-1114  
OAH Docket No. 12-2500-14473-2

In the Matter of a Commission Investigation  
into Qwest's Compliance with Section  
271(d)(3)(C) of the Telecommunications Act  
of 1996 That the Requested Authorization is  
Consistent with the Public Interest,  
Convenience and Necessity

PUC Docket No. P-421/CI-01-1373  
OAH Docket No. 6-2500-14488-2

**ORDER CERTIFYING MOTION TO COMMISSION**

This matter came on before Administrative Law Judge Allan W. Klein by motion filed on August 12, 2002. Due to the timing of this motion, further discussed below, no opportunity for responses to this motion has been afforded to the parties.

**AT&T MOTION FOR STAY OR TO INITIATE COMMISSION INVESTIGATION**

1. AT&T filed a motion to stay the Commission's consideration of Qwest's proposed 271 filing with the FCC. In the alternative, AT&T requested that the Commission initiate an investigation into Qwest's agreements to provide "lit-capacity IRUs" (indefeasible rights of use) to customers within Qwest's 14-state local service region. AT&T maintains that these agreements constitute the provision of in-region, interLATA services in violation of 47 U.S.C. § 271. Qwest has maintained that the IRU agreements constitute a sale of assets, not providing services. AT&T cites a recent announcement by Qwest as an acknowledgement of the violation.<sup>[1]</sup> The *IRU Announcement* includes the language, "...if the optical capacity asset sales were instead treated as operating leases or services contracts."<sup>[2]</sup>

2. The proceedings under this docket have progressed to the point where the ALJ Findings of Fact, Conclusions, and Recommendation (Report) are rapidly nearing completion. The ALJ expects that the Report in this docket will be issued prior to the parties to this proceeding, particularly Qwest, having an adequate opportunity to respond to AT&T's motion. Further, the relief requested is well suited to consideration by the Commission.

## CERTIFICATION OF MOTION

3. Pursuant to Minn. Rule 1400.7600, motions may be certified to the agency where a final determination by the agency would materially advance the ultimate termination of the hearing or the issues are solely within the expertise of the agency. Combining the motion to stay with the final agency decision in this docket will materially advance the ultimate termination of the hearing. The alternative relief requested by AT&T is for the Commission to initiate an investigation into this issue. That action is within both the agency's expertise and the agency's discretion. Under these circumstances, certification of AT&T's motion to the Commission is appropriate. For these reasons, the ALJ hereby CERTIFIES AT&T's Motion for Stay of Proceedings or, in the Alternative, for a Commission-initiated Investigation to the Commission for determination. The ALJ makes no recommendation to the Commission concerning the disposition of the Motion. Any further filings concerning this Motion shall be made directly to the Commission.

Dated: August 13, 2002

/s/ Allan W. Klein  
ALLAN W. KLEIN  
Administrative Law Judge

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<sup>[1]</sup> AT&T Motion, at 4. The cited announcement is entitled *Qwest Communications Provides Current Status of Ongoing Analysis of its Accounting Policies and Practices (IRU Announcement)* and available at <http://www.qwest.com/about/media/pressroom>.

<sup>[2]</sup> *IRU Announcement*, Optical Capacity Sales, fourth paragraph.