

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendraye	Commissioner

In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc., and U S WEST Communications, Inc.

ISSUE DATE: June 28, 2000

DOCKET NO. P-3009, 3052, 5096, 421, 3017/PA-99-1192

ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING MERGER SUBJECT TO CONDITIONS

**PROCEDURAL HISTORY**

**I. Initial Filings and Preliminary Orders**

On August 19, 1999 the Commission received a joint application for approval of a merger between Qwest Communications International Inc. and U S WEST, Inc. The application was filed by Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., and Phoenix Network, Inc., on behalf of their ultimate parent corporation, Qwest Communications International Inc., and by U S WEST Communications, Inc. on behalf of its parent corporation, U S WEST, Inc.

On October 25, 1999, November 30, 1999, and December 1, 1999, the Commission issued Orders acting on intervention petitions. On October 29, 1999 and December 9, 1999, the Commission issued Orders resolving discovery disputes. On December 7, 1999 the Commission issued an Order requiring the parties to enter into a protective agreement to ensure proper treatment of trade secret information disclosed in the course of the proceeding.

On March 7, 2000, the Commission issued a Notice and Order for Hearing referring the case to the Office of Administrative Hearings for contested case proceedings.

**II. The Parties**

The parties to the case were the petitioners (U S WEST/Qwest), the Minnesota Department of Commerce, the Residential and Small Business Utilities Division of the Office of the Attorney

General, the Northwestern Bell/U S WEST Retirees Association, AT&T Communications of the Midwest, Rhythms Links, Inc., Covad Communications Company, Cady Telemanagement, Inc., McLeodUSA Telecommunication Services, Inc., and ten competitive local exchange carriers filing jointly as “Small CLECs.”

The carriers making up the Small CLECs were HomeTown Solutions, LLC; Hutchinson Telecommunications, Inc.; Mainstreet Communications, LLC; MEANS Communications Corporation; NorthStar Access, LLC; Otter Tail Telcom, LLC; Paul Bunyan Rural Telephone Cooperative; Tekstar Communications, Inc.; VAL-ED Joint Venture, LLP, and WETEC LLC.

### **III. Settlement Agreements and Final Comments**

Between March 2, 2000 and April 25, 2000, U S WEST/Qwest reached settlement agreements with all parties to the case except the Northwestern Bell/U S WEST Retirees Association. With the exception of Cady Telemanagement, Inc., all intervening telecommunications carriers then withdrew from the case.

On April 28, 2000 the Commission issued an Order rescinding its referral for contested case proceedings. The Commission instead solicited final comments from the parties and interested persons on the merits of the proposed merger, including the claims raised by the Retirees Association.

The state agencies and U S WEST/Qwest filed joint comments supporting their settlement agreement. U S WEST/Qwest and Cady filed joint comments supporting their settlement agreement. U S WEST/Qwest and the Retirees Association filed opposing comments on the issues raised by the Retirees Association.

The Commission also received comments supporting the merger or withdrawing previously expressed opposition to the merger from the following interested persons: SBC Telecom, Inc.; the Minnesota Business Utility Users Council; Economic Development for Austin & Mower County; Bennett Office Technologies; the Northfield Economic Development Authority; and KandiLink, a west central Minnesota advocacy group for improved telecommunications in rural Minnesota.

### **IV. Reaching the Merits**

On June 6, 2000 the case came before the Commission on the merits. Having reviewed the entire record and having heard the arguments of the parties, the Commission makes the following findings, conclusions, and order.

## **FINDINGS AND CONCLUSIONS**

## **V. The Merger**

### **A. The Companies**

#### **1. U S WEST, Inc. and U S WEST**

U S WEST, Inc. is a Delaware corporation headquartered in Denver. Through its wholly-owned subsidiaries, including U S WEST, it provides telecommunications services to some 25 million customers nationwide. Its primary products are local service, long distance service, high-speed data networking (including Internet access and digital subscriber line services), broadband personal communications services, print and electronic directories, operator services, and, in limited markets, video services.

U S WEST is a Colorado corporation headquartered in Denver. It is one of the Regional Bell Operating Companies, providing local service in 14 states, including Minnesota. In Minnesota the company serves some 2.2 million residential and business (retail and wholesale) customers.

#### **2. Qwest and its Subsidiaries**

Qwest Inc. is a facilities-based multimedia communications services firm, incorporated in Delaware and headquartered in Denver. Through wholly-owned subsidiaries, the company provides the services listed below:

- Internet Protocol-enabled services, such as Internet access, web hosting, co-location, and remote access;
- voice, data, video, and related services for business, government, and residential customers;
- interstate and international long distance services;
- high-volume voice and private line services for other telecommunications providers, Internet service providers, and other data services companies;
- fiber optic network construction services;
- multimedia communications services for interexchange carriers, other telecommunications firms, and business and residential customers.

Four Qwest subsidiaries – Qwest Corp., LCI International Telecom Corp., USLD Communications, Inc., and Phoenix Network, Inc. – are authorized to provide telecommunications services in Minnesota. The companies stated in their application that these subsidiaries would divest themselves of their interLATA assets and operations before the merger closed, since the federal Telecommunications Act of 1996 prohibits incumbent local exchange carriers from providing in-region interLATA service before meeting detailed federal

requirements.<sup>1</sup> The Commission approved the subsidiaries' divestiture plan on May 16, 2000.<sup>2</sup>

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<sup>1</sup> 47 U.S.C. § 271.

<sup>2</sup> In the Matter of LCI International the Application of Telecom Corp., Phoenix Network, Inc., Qwest Communications Corporation, TeleDistance, Inc., and USLD Communications, Inc. for Approval of Assignment of Selected Assets to TeleDistance, Inc., Docket No. P-3009, 3052, 5096, 5873, 3017/PA-00-170, ORDER APPROVING ASSIGNMENT OF SELECTED ASSETS AND REVOKING OR MODIFYING CERTAIN CERTIFICATES OF AUTHORITY (May 16, 2000).

## **B. The Process**

The merger agreement provides for U S WEST, Inc. to be merged into Qwest Inc., with Qwest Inc. continuing under its current name as the surviving corporation. The direct and indirect wholly-owned subsidiaries of Qwest Inc. and U S WEST, Inc. will survive as wholly-owned subsidiaries of Qwest Inc. The surviving company will continue to have its headquarters in Denver.

The merger will be accomplished by Qwest Inc. issuing \$69 worth of its common stock for each share of U S WEST, Inc. common stock, subject to a “collar” on Qwest Inc.’s average stock price of \$28.26 and \$39.90 per share. The merger agreement contains a formula for determining the value of the Qwest stock, based on trading prices over a 30-day period ending three days before closing. There are upper and lower limits on how many Qwest shares each U S WEST, Inc. share will bring and an option to substitute cash in whole or in part, should Qwest’s common stock price drop below a specified point.

## **A. The Purpose**

The merger is being proposed for strategic reasons. The two companies have closely related, but distinct, products and core capabilities. Qwest, for example, has an advanced broadband fiber-optic network linking 150 cities throughout the United States; U S WEST has local telecommunications infrastructure in 14 states and expertise in providing advanced services to individual customers.

The companies believe that the synergy and economies of scope and scale resulting from the merger will create a “next generation” telecommunications firm that will deliver a wider range of services at lower cost than either company alone.

## **VI. The Legal Standard**

There are two statutes governing this transaction, Minn. Stat. § 237.23 and Minn. Stat. § 237.74, subd. 12. The first is the original telecommunications merger statute, applicable to competitive local exchange carriers under Commission rules and enabling legislation.<sup>3</sup> The second dates from 1993 and applies to all competitive carriers, whether they offer local service, long distance service, or both.

The first statute requires Commission consent before any merger or acquisition is consummated; the second requires a determination that the present or future public convenience and necessity requires the merger or acquisition.

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<sup>3</sup> Minn. Rules 7812.2200; Minn. Stat. § 237.035; Minn. Stat. § 237.16, subd. 13.

State law requires the Commission to consider eight goals in executing its regulatory duties in regard to telecommunications services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

Minn. Stat. §237.011.

## **VII. Summary of Issues and Commission Action**

The Commission will accept and approve the settlement agreements between Cady and petitioners and between the state agencies and petitioners. The Commission will approve the merger subject to the conditions and modifications set forth in those agreements.

The Commission will not impose merger conditions restricting the new company's administration of the pension fund, as requested by the Retirees Association. It will instead require prompt and full disclosure of the new company's plans for administering the pension fund and for administering non-pension post-retirement benefits. The Commission expects the new company to continue to honor the commitments made by U S WEST to its retirees, to assure that U S WEST retirees' earned pension benefits and health plan benefits are not reduced, and to administer the pension assets lawfully.

Each issue will be considered in turn.

## **VIII. Cady-U S WEST/Qwest Settlement**

Cady Telemanagement, Inc. (Cady), a facilities-based competitive local exchange carrier, had originally opposed the merger on grounds that it jeopardized wholesale service quality. Cady stated that it had ongoing service quality problems with U S WEST that the merger would exacerbate.

The two companies reached a settlement agreement resolving Cady's concerns. The settlement agreement

- (1) set objective measures of service quality in three critical areas and prescribed

remedies for failing to meet them;

(2) devised solutions for technical problems that had been disrupting Cady's service to its customers as Cady reduced its reliance on resold services and made greater use of its own facilities; and

(3) requested a Commission Order authorizing and directing U S WEST to give Cady two days notice before disconnecting resold service to any Cady customer, unless that notice would "delay any associated provisioning of services to that customer from another CLEC."

The Commission solicited comments on the Cady-U S WEST/QWEST agreement from all parties and from other potentially interested persons. No one objected to the agreement.

The Commission finds the agreement to be in the public interest. It will protect consumers by strengthening service quality. It will further the competitive goals of the state and federal telecommunications acts by making Cady a stronger competitor. It will not work to the detriment of any other carrier.

The Commission will therefore accept and approve the agreement and issue the order requested by the parties.

## **IX. State Agencies-U S WEST/Qwest Settlement Agreement**

### **A. Initial Concerns**

The two state agencies charged with representing the public interest in utility matters – the Department of Commerce, which represents the broad public interest, and the Residential and Small Business Utilities Division of the Office of the Attorney General, which represents residential and small business customers – had originally opposed the merger. They feared that the large, diversified communications firm it would create would be less attentive to local service quality in Minnesota and less likely to invest in Minnesota infrastructure than U S WEST, whose core business had long been local telephone service.

### **A. The Settlement Agreement**

The state agencies and petitioners have reached a settlement which they believe imposes the procedural and substantive conditions necessary for the merger to meet the public interest test. They urge the Commission to accept and adopt the settlement and to approve the merger subject to its terms. The main provisions of the settlement agreement are summarized below.

#### *Overall Service Quality*

- Qwest will invest \$170 million over normally budgeted amounts over the next four years to improve service quality in Minnesota.

- Qwest will hire an additional 180 customer service representatives, 150 network technicians, and 150 contractors for the purpose of improving service quality in Minnesota.
- Qwest will pay financial penalties substantially higher than those specified in the U S WEST AFOR<sup>4</sup> plan if it fails to meet the plan's service quality standards.
- Qwest will pay individual customer compensation in substantially higher amounts than those specified in U S WEST's AFOR plan if it fails to meet the plan's service quality standards.
- Qwest will file, as public data, detailed quarterly reports on its retail service quality in Minnesota.

#### *Advanced Services*

- Qwest will deploy DSL<sup>5</sup> service (high-speed data transmission service, often used for Internet access) or its equivalent in 13 rural exchanges that currently lack broadband service from any source.
- Qwest will implement a "mass grooming program" to remove from numerous local loops bridge taps and load coils which prevent their use for DSL services. Competing local exchange and data carriers will help determine the grooming schedule.

#### *Wholesale Service Quality*

- Qwest will fill wholesale orders for loops and unbundled dedicated interoffice transport facilities within specified time frames or pay stiff financial penalties.
- Qwest will pay financial penalties for any month when more than 5% of its wholesale orders go unfilled for more than 30 days; penalties will increase with the number of unfilled orders.
- Qwest will file proposed comprehensive wholesale service quality standards by July 1, 2000, will participate in an expedited proceeding to set permanent wholesale service quality standards, and will waive any right to a contested case proceeding on that filing.

Finally, on May 4, 2000, the settling parties filed miscellaneous corrections to the settlement

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<sup>4</sup> Alternative Form of Regulation.

<sup>5</sup> Digital Subscriber Line.

documents originally filed. On May 15, 2000, they filed three modifications to the settlement agreement, addressing concerns raised by the Commission at its April 25 hearing. The parties seek approval of their final agreement, as modified by these filings.

### C. Commission Action

The goals of the settlement agreement – improving service quality, promoting competition, speeding the deployment of advanced services, spurring innovation – are all central goals of Minnesota’s telecommunications policy.<sup>6</sup> Equally important, the agreement’s pragmatic, problem-solving approach appears to hold serious promise of advancing these goals.

As to service quality, for example, the agreement goes beyond targeted outcomes to require the new company to hire specific numbers of new employees with specific skills. It increases the penalties for poor service, with the intention of making it more economical to provide high-quality service than to pay the penalties. It quantifies the extra investment (\$170 million) believed to be necessary to meet service quality goals.

The agreement also holds significant potential for promoting competition. At this stage in the development of the local service market, new entrants are heavily dependent upon incumbents for seamless interconnection and for many of the components of their own service offerings. For new entrants, delays in filling wholesale orders and defects in wholesale service quality translate directly into dissatisfied customers and lost business. Effective wholesale service quality standards are therefore probably one of the most promising tools currently available for promoting retail competition.

The “mass grooming program” of local lines will also promote competition, by opening to competitive DSL providers markets now closed due to technical impediments on the phone lines. And making Qwest’s periodic service quality reports public could also promote competition, by helping consumers weigh service quality in selecting their local carrier.

The settlement agreement also carries significant potential to speed the deployment and growth of advanced services, one of the main objectives of state and federal telecommunications policy. The line grooming program is a major step in this direction, as is the company’s commitment to add DSL capacity in 13 non-metropolitan exchanges currently lacking broadband services.

Finally, the agreement is likely to encourage innovation by feeding public demand for new services, fostering creative competition in the local service market, and focusing the combined expertise and financial strength of U S WEST and Qwest on new markets and new services.

The Commission agrees with the parties that the proposed merger meets the public interest standard of Minn. Stat. §§ 237.23 and 237.74. The record not only shows no reasonable likelihood of public harm, it shows a significant likelihood of public benefit, in the form of higher service quality, increased competition, greater availability of advanced services, and a more innovative marketplace. These are all critical goals that will continue to guide the Commission in future dealings with the post-merger company.

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<sup>6</sup> Minn. Stat. § 237.011.

For all these reasons, the Commission will accept and adopt the settlement agreement, as modified by the parties' May 4 and May 15 filings, and will approve the merger subject to its terms and conditions.

**X. Retirees Association's Claims**

**A. Positions of the Parties**

**1. The Retirees Association**

The Retirees Association pointed to a company-wide pension fund surplus of some \$5.7 billion, stated that U S WEST had not granted cost-of-living increases to pensioners for years, and contended that U S WEST employees and retirees had accepted lower salaries in part because they had been led to believe that their pension benefits would include regular cost-of-living increases. They also expressed concern that merging the work forces of U S WEST and QWEST could dilute the surplus, making cost-of-living increases less likely and jeopardizing other post-retirement welfare benefits on which U S WEST retirees had come to depend, such as health insurance, life insurance, and discounted telephone service.

The Association stressed that the pension fund's original capital had come from telephone rates authorized by this and other state commissions. (The surplus was largely due to earnings on the investment of these funds.) They argued that the public interest and the integrity of the ratemaking process required the Commission to ensure that all amounts in the pension fund traceable to rates paid by Minnesota ratepayers be used only for the benefit of present and future Minnesota retirees. The Association agrees that the pension plan is covered by ERISA.

The Association asked the Commission to take one of two courses of action: (1) order U S WEST to negotiate with the Association on the future of pension and non-pension post-retirement benefits; or (2) issue a Commission order protecting retiree interests. They suggested that that Order include the following provisions:

- establishment of a "spin off" plan and trust fund that would enable U S WEST retirees to share in the existing pension surplus **or** implementation of a cost adjustment mechanism that would provide for regular, automatic, nondiscretionary increases in pension benefits;
- requiring U S WEST and QWEST to agree to use funds collected from Minnesota customers for the purpose of providing non-pension post-retirement benefits only to pay the cost of such benefits for U S WEST retirees;
- requiring U S WEST and QWEST to continue to provide all retiree benefits at a level no less than the current level **or** establishing a fully-funded, separate trust to administer a trust fund to provide non-pension post-retirement benefits.

## **2. Petitioners**

U S WEST/QWEST claimed that the relief the Association sought was preempted by the federal Employee Retirement Income Security Act (ERISA) and that that Act provided comprehensive protection of retirees' rights. They also asserted that the record lacked evidence to support the Association's claims that U S WEST had violated prior Commission Orders regarding rates collected to fund the pension plan or post-retirement welfare benefits.

## **3. The State Agencies**

The Department of Commerce and the RUD-OAG took no position on the Retirees Association's claims. They did state that the merger met the statutory public interest test when subjected to the terms and conditions set forth in their settlement agreement with U S WEST/QWEST.

### **B. The Legal Standard**

The ERISA statute states that it "shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 20 U.S.C. § 1144(a).

The courts have interpreted "relates to" broadly:

A law "relates to" an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.

Shaw v. Delta Airlines, Inc., 463 U.S. 85, 96-97,103 S. Ct. 2890, 2900, 77 L. Ed. 2d 490, 500 (1983).

The doctrine of ERISA preemption thus renders void any state law or state agency order that purports to affect the administration of employee benefit plans:

Even a state agency order that does not refer specifically to ERISA plans may be voided by preemption if the state's action has a connection to a plan protected by ERISA.

California Division of Labor Standards Enforcement, et al. v. Dillingham Construction, N.A. Inc. 519 U.S. 316, 117 S. Ct. 832 (1997).

### **A. Commission Action**

#### **1. Further Negotiations Will Not Be Ordered**

The Commission sees no reasonable likelihood that ordering further negotiations between petitioners and the Retiree Association would produce an agreement. The parties' inability to reach an agreement during the same time frame as the other 17 intervenors strongly suggests

that the differences between them are intractable.

Further, the Commission has seen no meaningful movement toward a settlement of these issues in the course of the docket and sees little potential for it now. It seems clear that granting the Association's request to order negotiations would only delay the Commission's consideration of these difficult issues. The Commission will therefore not require further negotiations and will instead address the issues on the merits.

## **1. The Relief Sought by the Retirees Association is Preempted**

The Commission finds that it cannot grant the relief sought by the Retirees Association.

The relief sought by the Retirees Association is precisely the kind of state action that is normally preempted by ERISA. An order of this Commission mandating cost-of-living increases for Minnesota retirees, requiring the company to create a separate pension plan for pre-merger Minnesota retirees/employees, or designating any portion of the pension fund surplus for non-pension benefits, would directly, immediately, and substantially affect the company's management of its ERISA plan.

The Association argues that the Commission can still take these and similar actions under two broad sources of authority: (1) its authority to enforce its earlier Orders, some of which included the cost of pension and other post-retirement benefits in calculating telephone rates; and (2) its authority to place conditions on mergers to protect the public interest, which, the Association argues, requires forcing the company to keep its promises to its retirees, whether those promises are legally binding or not.

While the Commission agrees that it clearly has the authority to enforce its Orders and to impose conditions on mergers, the Commission finds that the link between these powers and the relief sought by the Association is too tenuous to defeat preemption.

First, the Commission does not believe that the company has violated or is about to violate any Commission Order. This is not a case in which the Commission issued Orders granting rate increases for the explicit purpose of ensuring that the company's pension plan would provide regular cost-of-living increases or would provide a specific level of benefits. It is not even a case in which the Commission granted rate increases relying on company testimony that its pension plan would do these things.

The Orders at issue are standard ratemaking Orders, in which the Commission determined the company's revenue requirement and set rates at levels calculated to permit its recovery. These Orders merely factored post-retirement benefits into the revenue requirement equation, just as they factored in salaries, switches, coaxial cable, taxes, and all the other costs of service.

Ratemaking Orders do not impose any duty on the company to segregate incoming monies by expense category. Instead, these Orders set global revenue requirements and rates based on the most accurate financial projections available, with the understanding that actual expenses and revenues will fluctuate over time.

Neither is this a case in which the company inflated the pension costs it sought to have included in rates. By all accounts, those costs were accurate when sought and accurate when approved by the Commission. Instead, the claim is that the company mishandled amounts collected to cover these costs – and accrued interest and earnings – after those amounts had been placed in a separate account dedicated to post-retirement benefits. This is a quintessential

ERISA issue. Thus this Commission is proscribed from acting with regard to these issues.

Finally, while the Commission agrees that it has the public interest authority to place conditions on mergers, it does not believe that this authority extends to enforcing otherwise unenforceable representations claimed to have been made by the company about how it intended to administer its pension benefits plan. One of the purposes of the ERISA statute, after all, was to replace workers' reliance on employers' representations with clearly defined legal rights and duties. Issuing an order requiring the company to comply with non-legally-binding representations thought to have been made to U S WEST employees and retirees would clearly conflict with the language, meaning, and purpose of the ERISA statute.

For all these reasons, the Commission concludes that it cannot grant the relief the Retirees Association seeks. At the same time, however, the Commission will inform petitioners that it expects them to continue to honor the commitments made by U S WEST to the retirees and to assure that U S WEST retirees' earned pension benefits and health plan benefits will not be reduced. The Commission also expects that pension assets will be administered lawfully.

Finally, the Commission will require the post-merger company to provide substantial information on the management of the pension fund to the Retirees Association, to address future concerns the retirees may have, including the concerns listed below. The Commission will require the Company to provide this information initially within 90 days of closing and quarterly thereafter until all of the issues have been resolved:

- whether the pension plan will be terminated;
- whether the pension plan will be expanded to include Qwest employees, and if so, the companies' plans for funding that expansion;
- whether the companies intend to continue to fund non-pension benefits using the pension surplus;
- whether the pension plan is covered by the Pension Benefit Guarantee Corporation, and what type of legal framework and protections are provided;
- how benefits will not decrease, and how those funds are guaranteed by the pension plan;
- how the companies plan to handle cost-of-living adjustments moving forward.

The Commission will so order.

### **ORDER**

1. The Commission accepts and adopts the stipulation and agreement between petitioners, the Department of Commerce, and the Residential and Small Business Utilities Division of the Office of the Attorney General, as modified by the parties' May 4 and May 15 filings.
2. The Commission approves the settlement stipulation between petitioners and Cady Telemanagement and orders and authorizes U S WEST to begin giving Cady two days notice, in accordance with the terms of the Stipulation, before disconnecting any service

that Cady is buying from U S WEST and reselling.

3. The Commission approves the merger proposed by petitioners, subject to the terms and conditions of the two settlement agreements described above.
4. The Commission informs petitioners that the Commission expects U S WEST and Qwest to continue to honor the commitments made by U S WEST to the retirees and to assure that U S WEST retirees' earned pension benefits and health plan benefits will not be reduced. The Commission also expects that pension assets will be administered lawfully.
5. U S WEST/Qwest shall provide substantial information to the Retirees Association on the management of the pension fund for purposes of addressing future concerns retirees may have, including the concerns listed below. The merged company shall initially provide this information within 90 days of closing and shall provide this information quarterly thereafter until all of the issues have been resolved:
  - whether the pension plan will be terminated;
  - whether the pension plan will be expanded to include Qwest employees, and if so, the companies' plans for funding that expansion;
  - whether the companies intend to continue to fund non-pension benefits using the pension surplus;
  - whether the pension plan is covered by the Pension Benefit Guarantee Corporation, and what type of legal framework and protections are provided;
  - how benefits will not decrease, and how those funds are guaranteed by the pension plan;
  - how the companies plan to handle cost-of-living adjustments moving forward.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
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In the Matter of the Merger of  
the Parent Corporations of Qwest  
Communications Corporation, LCI  
International Telecom Corp., USLD  
Communications, Inc., Phoenix  
Network, Inc., and U S WEST  
Communications, Inc.

Docket No. P-3009, 3052, 5096,  
421, 3017/PA-99-1192

**STIPULATION AND AGREEMENT**

The Minnesota Department of Commerce (“Department”), the Minnesota Office of the Attorney General (“Attorney General”), Qwest Communications Corporation (“Qwest Corp.”), LCI International Telecom Corp. (“LCI”), USLD Communications, Inc. (“USLD”), and Phoenix Network, Inc. (“Phoenix”) (Qwest Corp., LCI, USLD and Phoenix, collectively “Qwest”), on behalf of their ultimate parent corporation, Qwest Communications International Inc. (“Qwest Inc.”), and U S WEST Communications, Inc. (“U S WEST”), on behalf of its parent corporation, U S WEST, Inc. (“U S WEST, Inc.”), herein collectively referred to as “the Parties,” whose authorized representatives have executed this Stipulation and Agreement, hereby jointly submit this Stipulation and Agreement to the Minnesota Public Utilities Commission (“Commission”) for its review and approval.

**BACKGROUND**

On August 19, 1999, Qwest and U S WEST (the “Companies”) submitted a Joint Application seeking an order approving the proposed merger of Qwest Inc. and U S WEST, Inc. Pursuant to

the terms of the Merger Agreement entered into by Qwest Inc. and U S WEST, Inc. on July 18, 1999, U S WEST, Inc., upon closing, will be merged into Qwest Inc., with Qwest Inc. continuing as the surviving corporation. Qwest Inc. does not anticipate transferring any certificates of authority as a result of this merger, except to the extent that it must do so in order to divest itself of certain prohibited interLATA assets prior to closing.

On January 3, 2000, the Attorney General and Department ("Public Intervenors") filed comments urging the Commission to reject the proposed merger unless, as part of its approval, the Commission imposed conditions to ensure that the merger is in the public interest. The Public Intervenors argued that the merger, as initially presented in the Joint Application, raised significant public interest concerns, and that the merger, without appropriate conditions, could divert attention and resources away from basic service in Minnesota and impede the merged company's ability to provide quality retail and wholesale service to its Minnesota customers. The Public Intervenors also expressed concern that the Joint Application provided no assurance that consumers would actually benefit from the merger's potential benefits. The Companies responded with reply comments urging the Commission to issue an order approving the merger based on the Companies' assertions of the merger benefits for Minnesota consumers, including increased cost-savings, economies of scale and scope, innovative service offerings and increased competition.

On March 7, 2000, the Commission referred this docket to the Office of Administrative Hearings ("OAH") for contested case proceedings. On March 17, 2000, U S WEST and Qwest filed a request for reconsideration, asking the Commission to reconsider its decision to refer the merger application for further proceedings.

The Parties now offer this Stipulation and Agreement for Commission approval to resolve the public interest concerns in this docket.<sup>1</sup> Accordingly, the Parties jointly recommend expeditious approval of the merger with the conditions and commitments specified below. The conditions and commitments set forth below protect Minnesota consumers from the merger's risks and advance the public's interest in high quality service, competitive choice and access to advanced, high speed telecommunications services.

#### STIPULATION AND AGREEMENT

The Parties stipulate and agree to request that the Commission issue an order approving the merger between Qwest Inc. and U S WEST, Inc., subject to and modified by the following provisions.

#### I. DEFINITIONS.

**A.AFOR.** "AFOR" means the Modified Alternative Form of Regulation Plan for the State of Minnesota, adopted in Docket No. P421/AR-97-1544, and effective January 1, 1999.

**B.CLEC or Wholesale Customer.** "CLEC" Or Wholesale Customer means a telecommunications carrier that has an interconnection agreement with the Company under 47 U.S.C. § 252 (e) and that purchases services or facilities from the Company for the purpose of providing telecommunications services. "CLEC" also includes Data Local Exchange Carrier ("DLEC").

**C.Company.** "Company" refers to U S WEST, Inc., Qwest Inc., and all their subsidiaries, successors, assigns and affiliates, except as otherwise specified herein.

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<sup>1</sup> The Commission applies a broad public interest analysis, which includes an inquiry into "the impact on ratepayers and competition in general . . ." *In the Matter of Joint Petition of WorldCom, Inc. and MCI Communications Corporation for Approval of the Acquisition of All the Outstanding Shares of Stock of MCI by WorldCom*, Docket No. P-443,3012/PA-97-1532 (April 9, 1998). *In re: MCIWorldcom, Inc.*, 185 PUR 4th 153, 162 (April 9, 1998).

**D.Closing Of The Merger And Merger Closing.** “Closing of the merger” and “merger closing” throughout this Agreement means the closing of the transaction pursuant to the Merger

Agreement between Qwest Inc. and U S WEST, Inc.

**E.Interconnection Facility.** “Interconnection facility” refers to any unbundled loop or unbundled dedicated interoffice transport subject to the interim provisioning standards under Section VIII of this Stipulation and Agreement.

**F.Customer Order.** “Customer Order” refers to any: (1) written order for interconnection facilities that is complete and does not contain erroneous information that prevents the Company from timely provisioning of those facilities; or (2) electronic order for interconnection facilities submitted by a wholesale customer and received by the Company .

**G.Previous Six Months.** “Previous six months” refers to either the period of time “January through June” or “July through December.”

## **II.INVESTMENT COMMITMENTS.**

### **A.Expenditures To Improve Service Quality.**

The Company agrees to spend at least \$170 million in the aggregate over the four years following the closing of the merger specifically to improve its network and service quality in Minnesota. These expenditures to improve service in Minnesota will include, but not be limited to: (1) hiring 180 additional employees to staff the Company’s call centers; (2) hiring 150 technicians in Minnesota to provision and repair services; (3) purchasing tools, trucks and test sets for the additional technicians hired; and (4) retaining 150 additional contractors to provision and repair service in Minnesota.

### **B.New Advanced Services Deployment**

Before December 31, 2003, the Company will deploy digital subscriber line ("DSL") or other equivalent advanced services capability in the 13 exchanges outside the Twin Cities metropolitan area, Rochester and St. Cloud wire centers identified in Exhibit 1. These wire centers will include the three exchanges in which the Company will deploy 1.5 Mbps service pursuant to its obligation under the AFOR.

**C.Expanded DSL Capability/ Mass Grooming Program.**

The Company agrees to further expand and facilitate the timely availability of loops capable of providing DSL to end-user customers, CLECs and other competitive providers of advanced services by undertaking a "mass grooming" program that includes the following actions:

**1.Scope of program.**

Within 9 months following the closing of the merger, the Company will complete a mass grooming program through which the Company will remove all bridged tap and load coil encumbrances from loops that are under 18 kilofeet in length in all Minnesota central offices identified in Exhibit 2. If, within the 12 months following the merger closing, the Company deploys DSL in any central office not listed in Exhibit 2, the Company will remove all bridged tap and load coil encumbrances for loops that are under 18 kilofeet in length within 9 months after DSL is deployed in that central office.

## **2.Implementation Schedule.**

The Company will complete the mass grooming in the priority order determined pursuant to paragraph 3 or 4 of this subsection such that the Company will:

a.complete its mass grooming in the first third of the central offices listed in Exhibit 2 within three months after the merger closes;

b.complete its mass grooming in the second third of the central offices listed in Exhibit 2 within six months after the merger closes; and

c.complete its mass grooming in the final third of the central offices listed in Exhibit 2 within nine months after the merger closes.

## **3.Prioritization.**

In order to determine the priority of the central offices identified in Exhibit 2 for the mass grooming, the Company agrees to meet with interested Minnesota CLECs and mutually agree to a prioritization of central offices. This prioritization meeting must be held no later than three weeks after the Commission meeting at which it approves this Stipulation and Agreement.

## **4.Commission Review and Decision.**

Within four weeks after the Commission's meeting at which it approves this Stipulation and Agreement, the Company will submit to the Commission the list developed under subsection 3 that prioritizes the central offices scheduled for mass grooming. If the Company and CLECs cannot agree on a priority list of central offices for mass grooming under paragraph 2.a of this subsection, the Company will implement its mass grooming program for the first three months of the program in the order specified by the Department and Attorney General, after consultation with interested CLECs and the Company. If the Company and CLECs cannot agree on a priority list of central offices under paragraphs 2.b and 2.c of this subsection, the Company will

implement its mass grooming program for the last six months of the program in the order specified by the Commission.

**5.No Conditioning Charges.**

No conditioning charges will be applied in the central offices identified in Exhibit 2 pending completion of the mass grooming program.

**III. ADDITIONAL RETAIL SERVICE QUALITY PERFORMANCE PAYMENTS.**

**A. Generally.**

The Company agrees to pay additional penalties and customer remedies, as provided in Sections III & IV, in the event the Company does not achieve substantial compliance with its AFOR service quality standards. These additional penalties and customer remedies shall be in effect for the period beginning on January 1, 2001 and continue until December 31, 2004. The additional penalties shall be payable on an annual basis. The additional customer remedies shall be paid in conjunction with the customer-specific remedies paid pursuant to the AFOR.

**B. Substantial Compliance.**

For purposes of assessing additional penalties under this Stipulation and Agreement, substantial compliance refers to the Company meeting seven out of eight of the retail service quality standards in the AFOR in the applicable year of the AFOR and not missing the same standard for two or more years in a row. The service requirements and limitations included in the AFOR plan, including the force majeure provisions, will apply under this Stipulation and Agreement.

**C. Penalty Amounts For Failing to Achieve Substantial Compliance.**

For the 12 month period beginning on January 1, 2001 and for the three subsequent calendar years (through December 31, 2004), the Company will pay additional annual penalties pursuant to this section as follows:

- \$15 million if the Company fails to meet one of the eight standards contained in the AFOR that the Company failed to meet in the preceding year.
- \$20 million if the Company fails to meet two of the eight standards contained in the AFOR.
- \$25 million if the Company fails to meet three of the eight standards contained in the AFOR.
- \$30 million if the Company fails to meet four of the eight standards contained in the AFOR.
- \$35 million if the Company fails to meet five of the eight standards contained in the AFOR.
- \$40 million if the Company fails to meet six of the eight standards contained in the AFOR.
- \$45 million if the Company fails to meet seven of the eight standards contained in the AFOR.
- \$50 million if the Company fails to meet eight of the eight standards contained in the AFOR.

**D. Use Of Penalty Proceeds.**

The additional penalties paid under this Section shall be allocated to all the Company's retail basic local exchange service end-user customers on a pro-rata basis in the form of an annual, one-time credit on customer bills.

**IV. ADDITIONAL CUSTOMER-SPECIFIC REMEDIES.**

The Company shall, beginning on January 1, 2001, and throughout the term of this Stipulation and Agreement, pay additional customer-specific remedies for each category of AFOR

noncompliance during the previous six months as provided under subsections A through D below. These additional customer remedies shall equal the amount payable as customer-specific remedies under Appendix B of the AFOR, multiplied by two.

**A.Additional Remedies for Basic Residential and Basic Business Service Install Intervals.**

The Company shall pay additional customer-specific remedies for missing the installation intervals for basic residential and basic business service under the AFOR if the Company failed to meet the applicable AFOR installation or held order standards in the previous six months.

This subsection does not require the Company to provide additional non-monetary customer remedies, such as an additional telephone number, remote call forwarding, a directory assistance listing, a wireless handset, or a voice mailbox. The additional customer remedies payable under

this subsection are as follows:

<u>Missed Installation Commitment</u>	<u>AFOR Amount</u>	<u>Additional Amount</u>	<u>Total Payment</u>
2 day (primary res. line):	\$15	\$30	\$45
2 day (primary bus. line):	\$45	\$90	\$135
2 day (additional res. line):	\$15	\$30	\$45
2 day (additional bus. line):	\$45	\$90	\$135

<u>Service not Installed Within</u>	<u>AFOR Amount</u>	<u>Additional Amount</u>	<u>Total Payment</u>
7 days (primary res. line)	\$100 & waiver of installation charge	\$200 <sup>1</sup> & 2 x installation charge	\$300 & 3 x installation charge
7 days (primary bus. line)	\$100 & waiver of installation charge	\$200 & 2 x installation charge	\$300 & 3 x installation charge

<u>Service Not Installed Within</u>	<u>AFOR Amount</u>	<u>Additional Amount</u>	<u>Total Payment</u>
30 days (primary line)	recurring charge	2 x recurring charge	3 x recurring charge
30 days (additional res. line)	installation charge	2 x installation charge	3 x installation charge

**B. Additional Remedies For Design Installation.**

The Company shall pay additional customer-specific remedies for missing design service install intervals if the Company failed to meet the AFOR’s design service install standard in the previous six months. The additional customer remedies payable under this subsection are as follows:

<u>Service Not Installed Within</u>	<u>AFOR Remedies</u>	<u>Additional Amount</u>	<u>Total Payment</u>
Interval Guide Timeframe or 45 days	Waive installation charge	2 x installation charge	3 x installation charge

**C. Additional Remedies for Repeat Trouble Reports.**

The Company shall pay additional customer-specific remedies for repeat trouble reports if the Company failed to meet the AFOR’s repeat trouble report standard in the previous six months. The additional customer remedies payable under this subsection are as follows:

<u>Report of Network Trouble</u>	<u>AFOR Remedies</u>	<u>Additional Amount</u>	<u>Total Payment</u>
Twice in 90 days	\$10 res. / \$40 bus.	\$20 res. / \$80 bus.	\$30 res. / \$120 bus.

**D. Additional Remedies for Service Outages.**

The Company shall pay additional customer-specific remedies for failing to clear out of service reports if the Company failed to meet the AFOR’s standard for clearing out of service reports in the previous six months. The additional customer remedies payable under this subsection are as follows:

<u>Service Outage</u>	<u>AFOR Remedies</u>	<u>Additional Amount</u>	<u>Total Payment</u>
over 48 hours (primary or additional res.)	\$5.00 per day	\$10.00 per day	\$15.00 per day
over 8 days (primary res.) <sup>2</sup>	\$100.00	\$200.00	\$300.00
over 24 hours (primary bus.)	\$10.00 per day	\$20.00 per day	\$30.00 per day
between 5-48 hours (DS1)	\$120-\$420	\$240-\$840	\$360-\$1260
more than 48 hours (DS1)	Greater of \$420 or recurring charge	greater of \$840 or 2 x recurring charge	greater of \$1260 or 3 x recurring charge
between 5-48 hours (DS3)	\$1000-\$3000	\$2000-\$6000	\$3000-\$9000
more than 48 hours (DS3)	Greater of \$4000 or recurring charge	greater of \$8000 or 2 x recurring charge	greater of \$12000 or 3 x recurring charge

**V. MISCELLANEOUS RETAIL SERVICE QUALITY ISSUES.**

**A. Public Filing Of Retail Service Quality Reporting.**

The Company shall file its service quality compliance reports under the AFOR, including wire-center specific information as public data.

**B. Deferring Action On AFOR Service Quality Investigation.**

The Attorney General and the Department agree to recommend to the Commission that it defer its investigation into the Company’s service quality, pursuant to Section V, Appendix B of the AFOR, until at least 1 year after the date of the merger closing if the following two conditions have been met for calendar year 2000: (1) the Company’s retail service quality performance under the AFOR is at or above its annual 1999 levels with respect to the AFOR service quality standards the Company failed to meet in 1999; and (2) the Company meets all the AFOR service quality standards it met in calendar year 1999.

**C. No Modification of AFOR.**

The Company will remain subject to the AFOR and the Parties agree that this Stipulation and Agreement does not modify the terms of the AFOR or the service quality agreement contained therein. The Company will remain obligated to pay all retail service quality penalties and customer remedies pursuant to the AFOR in addition to the retail service quality penalties and customer remedies contained in this Stipulation and Agreement.

**VI. INTERLATA DIVESTITURE.**

**A. Commission Approval.**

Qwest Inc. agrees to obtain Commission approval for the transfer of its interLATA customer base in Minnesota to an independent third party buyer (“Buyer”).

**B. PIC Change Charges.**

Qwest Inc. agrees to pay all Primary Interexchange Carrier (“PIC”) change charges associated with the transfer of its interLATA customer base in Minnesota to a Buyer. Qwest Inc. further agrees to pay all PIC change charges for any customer that transfers to a carrier other than Buyer, provided: (1) that the customer’s new interLATA carrier of choice has not otherwise paid, or would not in the ordinary course pay, the PIC change charge; and (2) that the customer transfers to its new interLATA carrier of choice within 60 days of delivery of the customer notice informing the customer of the transfer.

**C. Department and Attorney General Support.**

The Department and the Attorney General agree that approval of Qwest’s divestiture-related applications as filed with the Commission<sup>2</sup> is in the public interest, provided that: (1)

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<sup>2</sup> See Minnesota PUC Docket Nos. P5873/NA-00-169 (TeleDistance Application for Authority); P3009, 3052, 5096, 5546, 5873, 3017/PA-00-170 (Qwest/TeleDistance Asset Assignment Application); P3009, 5096, 5546, 5873/PA-00-315 (Qwest/TeleDistance/Touch America Asset Transfer Application).

customers are adequately notified of the change in carrier from Qwest to the third party buyer; and (2) the terms in Section B above (“PIC Change Charges”) are met.

## **VII. WHOLESALE SERVICE QUALITY PROCEEDING.**

### **A. GENERAL.**

The Company agrees to participate and cooperate in an expedited proceeding to establish permanent wholesale service quality standards, including, but not limited to, standards that relate to: 1) provisioning intervals and held orders for interconnection facilities; 2) timely access by wholesale customers to information needed to provide resale or facilities-based service to end-user customers; 3) the ordering process for wholesale services and interconnection facilities, including time-intervals and requirements for firm order commitments ("FOCs"); 4) missed appointments for installation, repair, testing or service “cut-overs;” and 5) service or circuit failures and intervals for repair.

### **B. Specific Commitments.**

To facilitate the expedited adoption of permanent wholesale service quality standards, the Company agrees to:

- 1) file with the Commission, no later than July 1, 2000, proposed wholesale service quality standards that address, at a minimum, the matters listed above in Subsection A;
- 2) participate in an expedited Commission proceeding to establish wholesale service quality standards for the Company and waive any right it may otherwise have in that proceeding to seek a contested case under Minnesota Statutes, Chapter 14; and
- 3) comply with the interim wholesale provisioning intervals and payment requirements set forth below under Sections VIII through XIII, in addition to any requirements and payments required under the Company’s interconnection agreements, beginning January 1,

2001 until alternative carrier-to-carrier wholesale service standards are adopted or approved by the Commission, or until December 31, 2002, whichever is earlier.

### **VIII. INTERIM PROVISIONING STANDARDS FOR INTERCONNECTION FACILITIES.**

#### **A. Customer Orders Subject To Interval Requirements.**

Any customer order submitted by a wholesale customer and received by the Company for interconnection facilities shall be subject to the interval requirements in this Section; however, for purposes of the penalties or remedies under this Stipulation and Agreement, a customer order submitted by a wholesale customer and received by the Company for interconnection facilities will not be subject to these interval standards if:

1) the CLEC placing the order did not provide forecasts as required under either Section X or XI, whichever is applicable; or

2) the customer order is for an entire unbundled loop sought exclusively for the provision of DSL, and the wholesale customer can offer the specific DSL service it seeks to provide through a line-sharing arrangement with the Company; or

3) the customer order seeks unbundled loop capacity to provide DSL exclusively either through purchasing an entire loop or purchasing a portion of the spectrum on a loop under a line-sharing arrangement and one of the following conditions applies:

a. the loop is greater than 18,000 feet;

b. the loop contains digital loop carrier facilities that would prevent the CLEC from using the loop to offer DSL; or

c. the loop is in a central office subject to the mass grooming program under Section II.C, exhibit 2, and the customer order is placed before the applicable completion deadline for that central office.

**B. Provisioning Intervals When Interconnection Facilities Are Available.**

**1. Two and four wire voice grade analog loops.**

The Company shall provide 2 and 4 wire voice grade analog loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	5 business days in high density zones 6 business days in low density zones
9 to 16 lines	6 business days in high density zones 7 business days in low density zones
17 - 24 lines	7 business days in high density zones 8 business days in low density zones
25 or more lines	ICB

**2. Two and four wire non-loaded loops.**

The Company shall provide 2 and 4 wire nonloaded loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	5 business days in high density zones 8 business days in low density zones
9 to 16 lines	6 business days in high density zones 9 business days in low density zones
17 - 24	7 business days in high density zones 10 business days in low density zones
25 or more	ICB

**3. Digital capable unbundled loops (e.g. DS1 capable, ISDN capable).**

The Company shall provide digital capable unbundled loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	5 business days in high density zones 8 business days in low density zones
9 to 16 lines	6 business days in high density zones 9 business days in low density zones
17 to 24 lines	7 business days in high density zones 10 business days in low density zones
25 or more lines	ICB

**4. Digital capable unbundled loops (DS3 capable).**

The Company shall provide digital capable unbundled loop facilities (DS3 capable) within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	7 business days in high density zones 9 business days in low density zones
4 circuits or more	ICB

**5. Unbundled dedicated interoffice transport (UDIT) - DSO.**

The Company shall provide unbundled dedicated interoffice transport at the DSO level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	5 business days in high density zones 6 business days in low density zones
9 to 16 lines	6 business days in high density zones 7 business days in low density zones
17 to 24	7 business days in high density zones 8 business days in low density zones
25 or more	ICB

**6. Unbundled dedicated interoffice transport - DS1.**

The Company shall provision unbundled dedicated interoffice transport at the DS1 level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	5 business days in high density zones 8 business days in low density zones
9 to 16 lines	6 business days in high density zones 9 business days in low density zones
17 to 24	7 business days in high density zones 10 business days in low density zones
25 or more	ICB

**7. Unbundled dedicated interoffice transport -DS3.**

The Company shall provision unbundled dedicated interoffice transport at the DS3 level within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	7 business days in high density zones 9 business days in low density zones
4 circuits or more	ICB
OC3 and higher	ICB

**C. Provisioning Intervals When Interconnection Facilities Are Not Available (January 1, 2001 Through December 31, 2001).**

**1. Two and four wire voice grade analog loops.**

The Company shall provide 2 and 4 wire voice grade analog loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	20 business days in high density zones 21 business days in low density zones
9 to 16 lines	21business days in high density zones 22 business days in low density zones
17 to 24	22 business days in high density zones

	23 business days in low density zones
25 or more	ICB

**2. Two and four wire non-loaded loops.**

The Company shall provide 2 and 4 wire nonloaded loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	20 business days in high density zones 23 business days in low density zones
9 to 16 lines	21 business days in high density zones 25 business days in low density zones
17 to 24	22 business days in high density zones 25 business days in low density zones
25 or more	ICB

**3. Digital capable unbundled loops (e.g. DS1 capable, ISDN capable).**

The Company shall provide digital capable unbundled loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	20 business days in high density zones 23 business days in low density zones
9 to 16 lines	21 business days in high density zones 24 business days in low density zones
17 to 24	22 business days in high density zones 25 business days in low density zones
25 or more	ICB

**4. Digital capable unbundled loops (DS3 Capable).**

The Company shall provide digital capable unbundled loop facilities (DS3 capable) within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	45 days
4 circuits or more	ICB

**5. Unbundled dedicated interoffice transport (UDIT) DSO.**

The Company shall provide unbundled dedicated interoffice transport at the DSO level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	20 business days in high density zones 21 business days in low density zones
9 to 16 lines	21 business days in high density zones 22 business days in low density zones
17 to 24	22 business days in high density zones 23 business days in low density zones
25 or more	ICB

**6. Unbundled dedicated interoffice transport (UDIT) - DS1.**

The Company shall provision unbundled dedicated interoffice transport at the DS1 level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	20 business days in high density zones 23 business days in low density zones
9 to 16 lines	21 business days in high density zones 24 business days in low density zones
17 to 24	22 business days in high density zones 25 business days in low density zones
25 or more	ICB

**7. Unbundled dedicated interoffice transport (UDIT) - DS3.**

The Company shall provision unbundled dedicated interoffice transport at the DS3 level within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	22 business days in high density zones 24 business days in low density zones
4 circuits or more	ICB
OC3 and higher	ICB

**D. Provisioning Intervals When Interconnection Facilities Are Not Available  
(January 1, 2002 Through December 31, 2002)**

**1. Two and four wire voice grade analog loops.**

The Company shall provide 2 and 4 wire voice grade analog loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	15 business days in high density zones 16 business days in low density zones
9 to 16 lines	16 business days in high density zones 17 business days in low density zones
17 to 24	17 business days in high density zones 18 business days in low density zones
25 or more	ICB

**2. Two and four wire non-loaded loops.**

The Company shall provide 2 and 4 wire nonloaded loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	15 business days in high density zones 18 business days in low density zones
9 to 16 lines	16 business days in high density zones 19 business days in low density zones
17 to 24	17 business days in high density zones 20 business days in low density zones
25 or more	ICB

**3. Digital capable unbundled loops (e.g. DS1 capable, ISDN capable).**

The Company shall provide digital capable unbundled loop facilities within the following time intervals after the Company receives a customer's order:

1 to 8 lines	15 business days in high density zones
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	18 business days in low density zones
9 to 16 lines	16 business days in high density zones 19 business days in low density zones
17 to 24	17 business days in high density zones 20 business days in low density zones
25 or more	ICB

**4. Digital capable unbundled loops (DS3 capable).**

The Company shall provide digital capable unbundled loop facilities (DS3 capable) within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	45 days
4 circuits or more	ICB

**5. Unbundled dedicated interoffice transport (UDIT) - DSO.**

The Company shall provide unbundled dedicated interoffice transport at the DSO level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	15 business days in high density zones 16 business days in low density zones
9 to 16 lines	16 business days in high density zones 17 business days in low density zones
17 to 24	17 business days in high density zones 18 business days in low density zones
25 or more	ICB

**6. Unbundled dedicated interoffice transport - DS1.**

The Company shall provision unbundled dedicated interoffice transport at the DS1 level within the following time intervals after the Company receives a customer's order:

1 to 8 lines	15 business days in high density zones 18 business days in low density zones
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9 to 16 lines	16 business days in high density zones 19 business days in low density zones
17 to 24	17 business days in high density zones 20 business days in low density zones
25 or more	ICB

**7. Unbundled dedicated interoffice transport - DS3.**

The Company shall provision unbundled dedicated interoffice transport at the DS3 level within the following time intervals after the Company receives a customer's order:

1 to 3 circuits	17 business days in high density zones 19 business days in low density zones
4 circuits or more	ICB
OC3 and higher	ICB

**E. Provisioning Intervals For Unbundled DSL Loops.**

**1. Available conditioned loops.**

Unbundled loops ordered for DSL that are available and that do not need conditioning shall be provided as specified above under Section VIII. B. 2 for two and four wire nonloaded loops.

**2. Available unconditioned loops.**

Unbundled loops ordered for DSL that are available but that need conditioning shall be provided within 15 business days of the date ordered.

**3. Unavailable loops.**

Unbundled loops ordered for DSL that are not available shall be provisioned within the intervals established for two and four wire nonloaded loops under Section VIII. C. 2, or VIII D. 2, whichever is applicable.

**4. Line sharing.**

The intervals in subsections 1 and 2 above shall apply to unbundled loops ordered or provisioned pursuant to a line-sharing arrangement.

**IX. INTERIM HELD ORDER STANDARD.**

**A. Customer Orders Subject To Held Order Standard.**

Any customer order submitted by a wholesale customer and received by the Company for interconnection facilities shall be subject to the held order standard in this Section; however, for purposes of the penalties or remedies under this Stipulation and Agreement, a customer order will not be subject to the held order standard if:

1) the CLEC placing the order did not provide forecasts as required under either Section X or XI, whichever is applicable;

2) the customer order is for an entire loop sought exclusively to provide DSL and the wholesale customer can offer the specific DSL service it seeks to provide through a line-sharing arrangement with the Company; or

3) the customer order seeks loop capacity exclusively to provide DSL either through purchasing an entire loop or purchasing a portion of the spectrum on a loop under a line-sharing arrangement and one of the following conditions applies:

a. the loop is greater than 18,000 feet;

b. the loop contains digital loop carrier facilities that would prevent the CLEC from using the loop to offer DSL; or

c. the loop is in a central office subject to the mass grooming program under Section II.C, exhibit 2, and the customer order is placed before the applicable completion deadline for that central office.

**B. Standard.**

No more than 5% of active customer orders for interconnection facilities listed above shall be held longer than 30 days for company reasons.

**C. Agreement To Clear Held Orders.**

The Company will clear all of the interconnection facilities held orders, excluding DSL orders for loops longer than 18,000 feet or which contain digital loop carrier facilities as of the execution date of this Stipulation and Agreement, within 60 days after the merger closing.

**X. PENALTIES.**

**A. Forecasts.**

**1. Forecasting required.**

Any customer order for interconnection facilities will be included in the penalty calculations under this Section if the ordering CLEC has provided reasonable annual forecasts of the CLEC's anticipated needs for interconnection facilities by product type to the wire center level, and if the CLEC has updated those forecasts on a quarterly basis. The forecasts will be presumed reasonable for the purposes of a penalty calculation.

**2. Company challenge to penalty calculation.**

On or before the date penalty payments are due under Section X, the Company may challenge the inclusion of a customer order in its penalty calculation by rebutting the presumption that the CLEC's forecast related to the type of interconnection facilities actually ordered was reasonable. Notwithstanding any challenge, the Company will pay into an interest bearing escrow fund any penalty amounts that it challenges.

### **3. Procedures for company challenge.**

The determination of whether the Company has rebutted the presumption of reasonableness accorded CLEC forecasts will be made in an arbitration proceeding by an Administrative Law Judge (“ALJ”) from the Office of Administrative Hearings who is experienced in telecommunications issues. The Company will initiate the proceeding by filing a notice of challenge with the Commission and serving that notice on the Public Intervenors and any CLECs whose orders the Company seeks to exclude from the penalty calculation. The Commission will refer the matter to the Office of Administrative Hearings for proceedings under this Section. The decision of the ALJ will be made, if possible, within sixty (60) days after the Commission refers the matter to the ALJ.

### **4. Evaluation criteria.**

Factors to be included in determining whether a forecast is reasonable, will include, but not be limited to:

- a. whether the Company made information available that allowed the CLEC to adequately determine whether facilities were available;
- b. whether the Company’s own retail forecast should have facilitated the timely availability of interconnection facilities;
- c. whether other CLEC forecast data should have assisted the Company in ensuring the timely availability of interconnection facilities;
- d. the accuracy of the Company’s own retail forecasts; and
- e. the information available to and considered by the CLEC in preparing forecasts.

**5. Costs.**

The Company will pay the reasonable costs, including but not limited to costs associated with witnesses, consultants or exhibits, the Public Intervenors incur while participating in the ALJ proceeding to determine whether the Company has rebutted the presumption of the reasonableness of any forecasts.

**6. Appeal.**

The Parties agree not to appeal any determination of the ALJ, which shall be enforceable as a final Commission Order.

**7. Delegation.**

The Parties recommend that to implement Subsections 1-6 above, the Commission expressly, by order, delegate its decision-making authority with respect to whether the Company has rebutted the presumption of reasonableness of forecasts to an Administrative Law Judge with the Office of Administrative Hearings.

**8. Company information.**

To assist in the development of forecasts, the Company will, at a minimum, make the following current information available to CLECs at the wire center and by product type:

- a) Features in the switch;
- b) Total number of loops;
- c) Total number of loops available;
- d) Total number of loops in service;
- e) Total number of loops that qualify for ADSL;
- f) Total number of loops that are non loaded;
- g) Total number of loops that have pair gain; and
- h) Total number of loops with unified digital loop carrier.

This information must be provided to a CLEC upon request within a reasonable timeframe, but no later than 10 days after the request. This obligation will begin within 60 days after the merger closing.

## **9. Customer location information.**

To assist in the development of forecasts, the Company will, at a minimum, make the following current customer location information available immediately upon request to CLECs at the wire center and by product type:

- a) whether the loop is ADSL qualified;
- b) the circuit ID;
- c) the loop length;
- d) the existence of load coils;
- e) the number and total length of bridged taps;
- f) the presence of Digital Loop Carrier (DLC), DAML, pair gain or Universal Digital Carrier, if on the loop;
- g) number of wires; and
- h) insertion loss.

This obligation will begin within 60 days after the merger closing.

## **10. Notice of requirement.**

The Company will provide its wholesale customers with notice of the forecasting requirement in this Section within 30 days after the date of the hearing at which the Commission approves the merger.

## **11. Confidentiality.**

The Company agrees that its employees will not share these forecasts with any employees of an organization within the Company or any of its subsidiaries or affiliates if such organization's, subsidiary's or affiliate's employees are responsible for any aspect of the Company's retail marketing operations.

### **B. Provisioning Interval Penalties.**

#### **1. Penalty amounts.**

Penalties for failure to comply, in the aggregate, with the provisioning intervals under Section VIII for interconnection facilities are as follows:

<u>Percentage of customer orders provisioned within required intervals or on the date service was requested, whichever is later:</u>	<u>Quarterly payment</u>
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87.5% and above	no payment applies
77.5-87.4%	\$3,000,000
67.5-77.4%	\$6,000,000
57-67.4%	\$10,000,000
47.5-57.4%	\$15,000,000
47.4% and below	\$20,000,000

**2. Calculation.**

The penalties for failure to comply with provisioning intervals under this Section shall be calculated as follows: Divide the quarterly aggregate number of interconnection facility orders provided within the required intervals under Section VIII or on the delivery date designated by the wholesale customer, whichever is later, by the total number of interconnection facility orders received during that quarter.

**3. Timing of penalty payments.**

Penalties shall be determined and assessed on a quarterly basis. The Company will pay penalty amounts no later than 60 days after the end of the quarter.

**4. Not exclusive.**

Penalties payable under this subsection are in addition to any other penalties or remedies, including any penalties or remedies payable by the Company under an interconnection contract.

**C. Held Order Penalties.**

**1. Penalty amounts.**

Penalties for failure to comply with the Held Order Standard under Section IX for interconnection facilities are as follows:

<u>Percentage of Orders held More than 30 days:</u>	<u>Quarterly Payment</u>
0-5%	no payment applies
6-10%	\$4,000,000
11-15%	\$6,000,000
15% and above	\$10,000,000

**2. Calculation.**

The penalties for held orders under this Section shall be calculated as follows: the aggregate number of interconnection facility orders held for 30 days or more on the last day of every month during the quarter divided by the total number of interconnection facility orders during the quarter.

**3. Timing of penalty payments.**

Penalties shall be determined and assessed on a quarterly basis. The Company will pay penalty amounts no later than 60 days after the end of the quarter.

**4. Not exclusive.**

Penalties payable under this subsection are in addition to any other penalties or remedies, including any penalties or remedies payable by the Company under an interconnection contract.

**D. Allocation Of Penalties For Provisioning Intervals And Held Orders.**

Penalties for both provisioning intervals and held orders will be allocated as follows:

**1. State Universal Service Fund.**

50% of the total penalties payable each quarter will be allocated to the Minnesota State Universal Fund once it is established. Until such a fund is established, any penalty proceeds collected for distribution to the fund shall be held in escrow in an interest-bearing account in the name of the Company and any interest accrued shall also be allocated to this fund.

## **2. State Infrastructure Fund.**

50% of the total penalties payable each quarter will be allocated, as directed by the Commission, to construct, rehabilitate or upgrade the Company's infrastructure in order to meet the Company's retail and wholesale provisioning obligations. The Commission will direct the allocation of penalty proceeds under this provision based on the recommendations of a task force appointed by the Commission. The task force must include representatives of the Company, CLECs, the Department, the Attorney General, consumers and any other members determined by the Commission.

## **XI. CUSTOMER SPECIFIC REMEDIES.**

### **A. Remedies.**

If an customer order is not completed by the Company within the required intervals under Section VIII above, the customer shall receive a credit of the non-recurring charge and shall also receive a credit of one month's recurring charge for each 15 business days beyond the due date under the provisioning intervals in Section VIII. Remedies will apply only with respect to customer orders from CLECs who have provided the Company with annual forecasts of the CLEC's anticipated needs for interconnection facilities to the wire center level, and updated those forecasts on a quarterly basis. The Company cannot challenge the payment of these remedies based on the reasonableness of forecasts.

### **B. Not Duplicative.**

These remedies are not intended to duplicate any remedies available to a CLEC under an interconnection agreement between the CLEC and the Company. A CLEC may, at its discretion, choose to receive remedies under this Stipulation and Agreement or its interconnection agreement for any Company failure to comply with provisioning intervals.

## **XII. MISCELLANEOUS WHOLESALE PROVISIONS.**

### **A. Force Majeure**

The Company shall not be liable for customer remedies or penalties for failing to meet the provisioning intervals and held order standard in this Stipulation and Agreement if an order is not timely provisioned or is held due to: (1) delays caused by a vendor in the delivery of equipment, where the Company has made a timely order of equipment; (2) delays caused by delays of a local government unit in granting approval for obtaining easements or access to rights-of-way, where the Company has made a timely application for any permit(s); (3) delays caused by the customer's construction project or the customer's lack of facilities or; (4) other delays outside the control of the Company, including, but not limited to, acts of God, explosions or fires, floods, tornadoes, epidemics, injunction, war, strike, or negligent or willful misconduct by customers or third parties. Except as identified above, events caused by employees or contractors of the Company are not outside of the control of the Company. In cases in which one of the above exceptions applies, the period of delay shall be added to the time for which the Company is not subject to penalties or customer-specific remedies.

### **B. Task Force On Wholesale Forecasting.**

The Company agrees to participate in an industry task force to evaluate forecasting and provisioning issues associated with new facilities for wholesale service. The task force membership shall be determined by the Commission with input from the Parties in this Docket and other interested persons.

### **C. Report on Wholesale Performance.**

The Company will, upon request, meet with the Department, Office of Attorney General or Commission and provide information on and discuss the Company's compliance with this

Stipulation and Agreement or with any wholesale service obligations in its interconnection agreements.

### **XIII. REPORTING REQUIREMENTS.**

The following data will be reported to the Commission, the Department, and the Office of the Attorney General. Reports of the monthly data will be provided to the agencies on a quarterly basis within 30 days after the end of the quarter.

#### **A. Investment Commitments.**

In support of its commitments under this Stipulation and Agreement, the Company will, within 30 days of the execution of this Stipulation and Agreement, file a report detailing:

- 1) the number of customer service personnel at each of its call centers serving Minnesota customers;
- 2) the number of technicians available to provision and repair service in Minnesota; and
- 3) the number of contractors available to provision and repair service in Minnesota.

On an annual basis, no later than January 31st of each year, the Company will file a report detailing the number of employees leaving the job categories contained in a, b, and c above, the number of new hires in each of those job categories, and the net number of employees.

#### **B. Advanced Services Deployment.**

1) Within 30 days of the year end (December 31, 2000), the Company will submit a report of all central offices in which it has deployed DSL or other equivalent advanced services capability.

2) In accordance with its commitment in Section II.C of this agreement, within 4 weeks of the Commission's meeting at which it approves this Stipulation and Agreement, the

Company will submit a joint list, together with interested Minnesota CLECs of the central offices scheduled for the mass grooming program developed under Section II of this Stipulation and Agreement. On a quarterly basis, beginning three months from the merger close and until completion of the mass grooming program, the Company will submit a report of the central offices in which it has completed its mass grooming program.

**C. Retail Service Quality.**

The Company will submit a report of the number of customers, and the amount of additional remedies paid under Section IV of this agreement. Monthly data will be reported on a quarterly basis.

**D. Wholesale Service Quality.**

The Company will provide the following wholesale service quality information. Data will be provided to the agencies by individual CLEC, as well as aggregate CLEC performance. Monthly data will be reported on a quarterly basis.

1) The total number of interconnection facility orders for each category identified under Section VIII. The report will include a breakdown of the total number of orders placed by all CLECS, and the total number of orders placed by CLECs providing a forecast in accordance with Sections X.A.1 and XI.

2) The Company will report the percentage of interconnection facility orders provisioned within the timeframes identified in Section VIII. The report will provide a breakdown of percentages for all customer orders, as well as for CLECs providing a forecast in accordance with Sections X.A.1 and XI.

3) The number of unbundled loop orders requiring conditioning, and the number conditioned within 15 business days.

4) The number of unbundled loop and trunk orders held for company reasons by the following categories:

- a. 0-30 days from the date of the order;
- b. 31-60 days from the date of the order;
- c. 61-90 days from the date of the order;
- d. over 90 days from the date of the order

5) The number of unbundled loop and trunk orders held more than 30 days as a percentage of total unbundled loop and trunk orders. The report will provide a breakdown of percentages for all CLEC orders, as well as for CLECs providing a forecast in accordance with Sections X and XI.

6) The number of customers receiving a credit of the non-recurring charge, and the amount of those credits. The number of customer's receiving a credit of the recurring charge, and the amount of those credits.

**E. Required Detail.**

The Company shall provide sufficient detail to substantiate its reports and shall file and report all data in compliance with its obligations under this Stipulation and Agreement.

**XIV. ADDITIONAL GENERAL TERMS OF AGREEMENT.**

**A. No Rate Recovery of Goodwill or Merger-Related Costs.**

The Company agrees not to seek recovery in any Commission proceeding of any merger-related transaction costs, goodwill or change in control payments.

**B. Required Filings.**

The Company agrees to file: (1) a report of the financial accounting as reported to the Companies' shareholders for goodwill generated as a result of the merger; (2) an affidavit attesting to the merger's completion within 30 days after the closing date; and (3) annual network investment reports based on independent audits addressing the adequacy of maintenance

and modernization of the Company's switched PSTN in Minnesota for four calendar years following the merger.

**C. OSS Testing.**

The Company will fund a Minnesota-specific independent test of its OSS systems if the Commission determines that additional performance testing beyond the Regional Oversight Committee OSS test is required. The Parties reserve their rights to advocate positions in support of and in opposition to the ROC performance testing.

**XV. RESERVATIONS.**

The Parties have entered into this Stipulation and Agreement with the express intent and purpose of settling and resolving the issues raised in this proceeding in a manner that is consistent with the public interest. By executing this Stipulation and Agreement, the Parties agree to represent to the Commission that they recommend acceptance of this Stipulation and Agreement without reservation, except that the Parties agree to reserve those rights and privileges set forth below.

**A. No Precedent.**

The Parties agree that no precedent be established by the resolution of the contested matters made in this Stipulation and Agreement. The resolutions reached herein are for settlement purposes only and do not necessarily represent the positions the Parties would take if they continued to litigate this proceeding. The Parties specifically reserve the right to take positions contrary to the resolutions agreed to herein in any future proceeding before the Commission or any other judicial or administrative body and to argue for entirely different results in any future proceeding before the Commission or any other administrative or judicial body. The Parties will not use this Stipulation and Agreement as evidence against or for

impeachment of a Party in any future proceeding before the Commission or any other administrative or judicial body.

**B. No Admission.**

Unless this Stipulation and Agreement is approved by the Commission, this Stipulation and Agreement, and any statements made in furtherance thereof, shall not be admissible in evidence or in any way described or discussed in this docket or in any other administrative or judicial proceeding.

**C. No Waiver of Rights.**

Except as to matters expressly set forth herein, no Party shall be deemed to have waived, compromised or limited any rights, remedies, or obligations arising out of, or relating to, matters previously determined by, or now pending before, the Commission or any other administrative or judicial entity as a result of this Stipulation and Agreement. By executing this Stipulation and Agreement, the Parties have not waived, compromised or limited any rights, duties, remedies, or jurisdictional objections available to them under Minnesota law, including Minnesota Statutes, chapters 216, 216A, 216B and 237, except as set forth herein.

**D. Commission Rejection, Modification And The Parties' Right To Void.**

**1. Right to void.**

If the Commission alters any portion of this Stipulation and Agreement, including this portion, the Stipulation and Agreement will immediately become voidable by any Party. In order to exercise the right of voiding the Stipulation and Agreement, a Party must file written notice of its intent to void within ten days after the Commission issues a final order rejecting or altering any portion of the Stipulation and Agreement.

**2. Party acceptance of Commission modification.**

If the Commission issues a final order altering any portion of this Stipulation and Agreement and no Party exercises its right to void the Stipulation and Agreement within ten days of the final order, then the Stipulation and Agreement, as modified by the Commission, becomes binding on all Parties. If the Commission approves this Stipulation and Agreement as filed or if the Commission modifies this Stipulation and Agreement and all Parties agree to the modification, the Parties waive their right to appeal the Commission's decision.

**3. Effect of Commission rejection or party voiding the Stipulation and Agreement.**

If the Commission rejects this Stipulation and Agreement or if the Commission modifies this Stipulation and Agreement and any Party exercises its right to void the Stipulation and Agreement within ten days of a final order, the Parties retain all of their rights in any related proceedings before the Commission. These rights include the right to file any relevant motions, briefs, or related documents with the Commission; participate in oral argument, or seek rehearing, reconsideration, clarification or alteration of the Commission's Order in this proceeding; appeal that Order, or take whatever action deemed necessary as if there had been no Stipulation and Agreement.

**XVI. MISCELLANEOUS.**

**A. Applicability And Scope.**

**1. General Applicability.**

This Stipulation and Agreement, together with all its provisions, is binding on the Attorney General, the Department, the Companies and their subsidiaries and affiliates engaged in the provision of telecommunications services in Minnesota, and each will support this

Stipulation and Agreement before all regulatory agencies with jurisdiction, and before all state and federal courts.

**2. Future Mergers.**

Should the Companies merge with, be acquired by, or otherwise combine or consolidate with another entity during the period when any provision of this Stipulation and Agreement is effective, the terms of this Stipulation and Agreement shall apply to and be binding on that entity and any subsidiary or affiliate of that entity engaged in the provision of telecommunications services in Minnesota.

**3. Complete Resolution of the Issues.**

This Stipulation and Agreement resolves, between the Parties, all issues related to the Commission's approval of the merger in Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192, and Docket Nos. P5873/NA-00-169; P3009; 3052; 5546; 5873; 3017/PA-00-170; and P3009; 5096; 5546; 5873/PA-00-315.

**4. Entire Agreement.**

The Parties acknowledge that this Stipulation and Agreement is the product of negotiations and compromise and that the Parties drafted it jointly. This Stipulation and Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understanding or agreements on such matters.

**B. Enforcement.**

This Stipulation and Agreement shall be enforceable as a Commission Order under Minn. Stat. §§ 216A.07, 237.27, 237.46, 237.461, and 237.462.

**C. Conflicting Legislation.**

The Company agrees to comply with this Stipulation and Agreement for its entire term specified in subsection D below, notwithstanding any conflicting state or federal legislation enacted after the date on which this Stipulation and Agreement is executed.

**D. Effective Date And Duration.**

Unless otherwise indicated herein, this Stipulation and Agreement shall become effective on the date of the Commission Order in which the merger is approved. The Stipulation and Agreement shall remain in effect until revoked or rescinded by written Order of the Commission, or until January 1, 2005, whichever is earlier. The Parties agree that this Stipulation and Agreement shall terminate in the event and on the date the U S WEST or Qwest files a letter with the Commission stating that it no longer seeks to consummate the proposed merger. Any requirements under this Stipulation and Agreement, which may already have been implemented, shall terminate at that time.

**E. Commission Approval.**

The provisions of this Stipulation and Agreement are subject to Commission approval. The Parties agree that the proposed merger, as modified by the forgoing conditions, is consistent with the public interest.

**XVII. EXECUTION.**

This Stipulation and Agreement may be executed in separate, identical counterparts.

Copies sent by facsimile are as effective as original documents.

Respectfully submitted,

**DEPARTMENT OF COMMERCE**

**QWEST COMMUNICATIONS  
INTERNATIONAL INC.**

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Dated: \_\_\_\_\_

<sup>2</sup> The additional \$200 credit does not apply if the customer has chosen to receive a wireless handset in lieu of the \$100 credit option.

<sup>2</sup> This \$300 credit for failure to restore service within 8 days is in addition to the per day credits the customer is entitled to based upon the number of days the customer's service is out.