

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Qwest Communications International, Inc.)	File No. EB-01-IH-0393
)	
)	NAL/Acct. No. 200232080018
)	
)	FRN Number 0001-6056-25
)	
)	

CONSENT DECREE

1. The Enforcement Bureau (the “Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) and Qwest Communications International, Inc. (“Qwest”) hereby enter into a Consent Decree terminating an informal Bureau investigation into possible violations of section 51.321(h) of the Commission’s rules. The investigation focused on whether Qwest had updated its Internet website listing premises that have exhausted collocation space “within ten days of the date at which a premises runs out of physical collocation space.”¹ On June 7, 2001 and March 15, 2002, the Bureau sent letters of inquiry to Qwest seeking information on Qwest’s space exhaustion posting policy.² Qwest submitted information in response to those inquiries.³

2. The posting rule states that an incumbent local exchange carrier (“ILEC”) must update its Internet website listing of premises that have exhausted collocation space “within ten days of the date at which a premises runs out of physical collocation space.”⁴ The purpose of the posting rule is to ensure that competitors do not “expend[] significant resources in applying for

¹ 47 C.F.R. § 51.321(h).

² See June 7, 2001 Letter from David H. Solomon, Chief, Enforcement Bureau, Federal Communications Commission, to Lauren Belvin, Vice President, Qwest; March 13, 2002 Letter from Maureen F. Del Duca, Deputy Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Lauren Belvin, and Robert B. McKenna, Associate General Counsel, Qwest Corporation, Inc.

³ See July 3, 2001 Letter from Robert B. McKenna to Charles W. Kelley, Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, attaching July 3, 2001 Declaration of Georganne Weidenbach, including exhibits; see also April 12, 2002 Letter from Robert B. McKenna to Hillary S. DeNigro, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, attaching Affidavit of Laurel L. Burke, and responsive documents contained in a binder and a box (collectively “Qwest Responses”).

⁴ 47 C.F.R. § 51.321(h).

collocation space in an incumbent ILEC's premises where no such space exists."⁵ During the course of an informal investigation by the Commission, the Bureau obtained information from Qwest indicating that through June 2001, Qwest may not have properly posted notice of premises that had run out of collocation space. Information obtained during the investigation indicates that in some instances competitive local exchange carriers may have submitted collocation applications for space at these premises only to have the applications denied on the ground that no space was available.

Terms of Settlement

3. For the purposes of this Consent Decree the following definitions shall apply:
- (a) "Commission" or "FCC" means the Federal Communications Commission;
 - (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission;
 - (c) "Qwest" means Qwest Communications International, Inc., Qwest Corporation, and any subsidiaries that are incumbent local exchange carriers, including its incumbent LEC operating telephone companies, and any successors or assigns of Qwest Corporation. or its incumbent LEC operating telephone companies;
 - (d) "Parties" means Qwest and the Bureau;
 - (e) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree;
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order; and,
 - (g) "Inquiry" means the investigation initiated by the Bureau's June 7, 2001 letter of inquiry regarding Qwest's compliance with 47 C.F.R. § 51.321(h).

4. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in an Adopting Order of the Bureau.

5. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission Order.

6. Qwest admits the jurisdiction of the Commission for purposes of this Consent Decree and the Adopting Order.

7. The parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Qwest and the Bureau of the Inquiry. In consideration for the termination by the Bureau of its investigation into whether Qwest has violated section 51.321(h) of the Commission's rules, 47 C.F.R. § 51.321(h), and in accordance with the terms of this

⁵ See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4793 (1999) ("*Advanced Services Order*").

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Consent Decree, Qwest agrees to the terms set forth herein.

8. Qwest has adopted or agrees to initiate no later than 30 days from the effective date of this Consent Decree new methods and procedures to help ensure its compliance with section 51.321(h) of the Commission's rules. First, Qwest's written policy will explicitly acknowledge that a grant of an application for collocation space, or any other event that makes unavailable the last remaining usable physical collocation space, triggers the ten-day time period within which Qwest must post notice of exhaustion of space for physical collocation. Second, Qwest will establish a centralized point of control to monitor and record Qwest's compliance with the posting requirements of section 51.321(h). Third, Qwest agrees to continue to comply with these remedial actions for the entire time period in which the Internet posting requirement in section 51.321(h) of the Commission's rules remains in effect in its current form. Finally, Qwest agrees to provide remedial training on the posting requirements of section 51.321(h) to all personnel responsible for Internet posting within 30 days of the release of the Adopting Order in this proceeding and to provide such training to any such new personnel within 30 days of their being assigned such responsibility.

9. Qwest shall make a voluntary contribution to the United States Treasury in the total amount of \$96,000 (ninety-six thousand dollars). This amount shall be paid within 30 days of the date on which the order adopting this Consent Decree becomes final. Such contribution shall be made, without further protest or recourse, by certified check, cashiers check, or money order drawn to the order of the Federal Communications Commission, and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Reference should be made on the check or money order to "Acct. No. 200232080018."

10. Qwest will maintain business records and documents sufficient to show (1) the date on which physical collocation space becomes unavailable at any Qwest premises, (2) the circumstance causing physical collocation space to become unavailable at any Qwest premises, and (3) the date of public posting of that information on Qwest's publicly available Internet site. Qwest will also maintain business records demonstrating compliance with the terms and provisions of this Consent Decree. Qwest will make the information described in this paragraph available to the Bureau within 21 days of the receipt of a specific written request from the Bureau. This requirement will begin thirty (30) days after the effective date of the Adopting Order and will expire twenty-four (24) months later.

11. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate the inquiry without any finding of liability on the part of Qwest.

12. The Bureau agrees that, based on the facts developed in the Inquiry and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Qwest concerning the matters that were the subject of the Inquiry. The Bureau also agrees that, based on the facts developed in the Inquiry, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Qwest with respect to its basic qualifications, including its character qualifications, to be a

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Commission licensee or with respect to compliance with the Commission's rules and policies.

13. Nothing in this Consent Decree shall prevent the Commission from adjudicating complaints filed pursuant to section 208 of the Communications Act, as amended, 47 U.S.C. § 208, against Qwest or its affiliates for alleged violations of section 51.321(h) of the Commission's rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the Commission's adjudication of that complaint will be based solely on the record developed in that proceeding. Nothing in this Consent Decree shall prevent the Commission from instituting new investigations or enforcement proceedings against Qwest pursuant to sections 4(i), 403, and 503 of the Communications Act in the event of any alleged future misconduct.

14. Qwest waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

15. Qwest waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

16. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

17. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Qwest nor the Commission shall contest the validity of the Consent Decree or Order, and Qwest and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

18. The Bureau and Qwest agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Act, including section 251 thereof, and the Commission's implementing rules, including section 51.321(h). The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Qwest does not admit any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree. Qwest neither admits nor denies any such noncompliance, violation, or liability.

19. The Parties agree that any provision of the Consent Decree that would require Qwest to act in violation of a rule or order adopted by the Commission will be superseded by such Commission rule or order.

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20. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,
Federal Communications Commission

For Qwest Corporation

David H. Solomon
Chief

Date

Date