

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

In the Matter of)	File No. EB-03-IH-0531
)	
Qwest Communications)	Acct. No. 200432080142
International Inc.)	
)	FRN No. 0003605953

ORDER

Adopted: May 26, 2004

Released: May 28, 2004

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (“Bureau”) has been conducting an investigation into possible violations by Qwest Communications International Inc. (“Qwest”) of sections 271 and 272 of the Communications Act of 1934, as amended (the “Act”), in connection with the marketing and provisioning of in-region, interLATA services in a state where Qwest had not received authorization to provide such services pursuant to section 271 of the Act.¹

2. The Bureau and Qwest have negotiated the terms of a Consent Decree that would terminate the Bureau’s investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether Qwest possesses the basic qualifications, including its character qualifications, to hold or obtain any Federal Communication Commission licenses or authorizations.

¹ See Letter from William H. Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa E. Newman, Vice President-Federal Regulatory, Qwest, dated December 15, 2003.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree IS ADOPTED.

6. IT IS FURTHER ORDERED that the above captioned investigation is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Qwest Communications International Inc. (“Qwest”), hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Qwest provided, marketed, or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Communications Act of 1934 (the “Act”), as amended.² As part of the Investigation, the Bureau has examined Qwest’s compliance with sections 271(a), (b), and 272(g), 47 U.S.C. §§ 271(a) and (b), 272(g), which prohibit a Bell Operating Company (“BOC”) from marketing or selling in-region interLATA services provided by an affiliate in states where it has not received authorization to provide such services pursuant to section 271 of the Act.

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) “Commission” means the Federal Communications Commission.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “Qwest” means Qwest Communications International Inc., any affiliate, d/b/a, predecessor-in-interest, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or business.
- (d) “Parties” means Qwest and the Bureau.

¹ See Letter from William H. Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Melissa E. Newman, Qwest, dated December 15, 2003 (“Letter of Inquiry”).

- (e) “In-region state” is defined at 47 U.S.C. § 271(i)(1), and for Qwest includes Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.
- (f) “Order” or “Adopting Order” means an Order of the Commission or the Bureau adopting the terms of this Consent Decree without change, addition, or modification.
- (g) “Effective Date” means the date on which the Commission or the Bureau releases the Adopting Order.
- (h) “Investigation” means the investigation commenced by the Bureau’s December 15, 2003 Letter of Inquiry into allegations that Qwest provided, marketed, or sold in-region, interLATA services in Arizona prior to its receipt of authorization pursuant to section 271 of the Act during the period of November 3, 2003 to November 4, 2003.

I. BACKGROUND

3. Qwest was prohibited from providing interLATA services originating in a particular in-region state until it received authorization to provide such services in such state pursuant to section 271 of the Act. 47 U.S.C. § 271(a). Section 272(g)(2) of the Act prohibits a BOC from marketing or selling in-region, interLATA service provided by an affiliate before it has satisfied the requirements of section 271. In particular, section 272(g)(2) states that “[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such States under section 271(d).”³

4. On May 24, 2001, the Bureau began an investigation into whether Qwest failed to comply with sections 271 and 272 of the Act and the *Qwest Merger Orders*. Specifically, the Bureau considered whether Qwest improperly provisioned certain in-region, interLATA services.⁴ The investigation was terminated by a Consent Decree entered into between Qwest and the Commission on May 5, 2003.⁵ The issues resolved by the May 5, 2003 Consent Decree are separate from the issues considered in this agreement. No evidence was presented in the instant Investigation indicating that Qwest violated any term or condition of the May 5, 2003 Consent Decree.

² 47 U.S.C. § 272(g)(2).

³ *In the Matter of Qwest Communications International Inc. and US West, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket 99-272, Memorandum Opinion and Order, 15 FCC Rcd 5376 (2000); Memorandum Opinion and Order, 15 FCC Rcd 11909 (2000) (collectively, “*Qwest Merger Orders*”).

⁴ *In the Matter of Qwest Communications International Inc.*, Order, 18 FCC Rcd 10299 (2003).

5. On December 23, 2002, Qwest received authorization pursuant to section 271 to provide long distance services to customers in nine of its in-region states: Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. On April 15, 2003, Qwest received authorization to provide long distance to customers in Oregon, New Mexico, and South Dakota. On June 26, 2003, Qwest received authorization to provide long distance services to customers in Minnesota. On December 3, 2003, Qwest received authorization to provide long distance to customers in its remaining in-region state, Arizona. Before receiving approval in each of these states, to ensure compliance with sections 271 and 272, Qwest states that it established specified procedures to govern the introduction of its long distance services. In particular, Qwest states that it had controls in place for each aspect of the long distance process – marketing, sales, ordering, and provisioning – and that these controls applied to Qwest as well as to its third-party vendors and suppliers.

6. On November 13, 2003, Qwest voluntarily disclosed to the Bureau an incident involving vendor telemarketing to Arizona customers for a brief period in November 2003.⁶ Specifically, from November 3 to 4, 2003, APAC Customer Services, Inc. (“APAC”), a vendor working on behalf of Qwest, made telemarketing calls to 353 residential customers in Arizona, offering Qwest long distance services. The Bureau began its investigation of this incident on December 15, 2003.⁷ Qwest provided written responses to the Letter of Inquiry from the Bureau on January 26 and 29, and March 2, 2004.⁸ During the course of the investigation, Qwest complied with the Bureau’s inquiry in a cooperative and good faith manner. Qwest states that in this case the marketing was not done by the BOC, but rather by APAC on behalf of Qwest’s section 272 affiliate, and only involved marketing of the affiliate’s long distance service, and not joint marketing of local and long distance service. Qwest states that APAC received a list of consumers in various in-region states to call from The Allant Group, who in turn, received the list from Qwest. Qwest states that it informed both vendors not to market long distance service to customers in Arizona prior to Qwest’s receipt of section 271 approval. Qwest states that it specifically asked that the names of Arizona customers on the list be removed. Qwest states that the vendor nevertheless called certain Arizona customers during an approximately 24-hour period at the start of the multi-state telemarketing campaign before the problem was found and corrected. Qwest states that no sales were made to Arizona customers and no long distance services were provided to Arizona customers due to the other controls it had in place. Qwest states that it subsequently augmented its oversight of third party telemarketing vendors.

⁵ See Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated November 13, 2003 (“Qwest November 13 Letter”).

⁶ See Letter of Inquiry.

⁷ See Qwest Response to December 15, 2003 Letter of Inquiry, dated January 26, 2004; Qwest Supplemental Response to December 15, 2003 Letter of Inquiry, dated January 29, 2004; Qwest Second Supplemental Response to December 15, 2003 Letter of Inquiry, dated March 2, 2004.

II. AGREEMENT

7. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Qwest and the Bureau. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, Qwest agrees to the terms, conditions, and procedures contained herein.

8. The Parties 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 by Qwest with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Qwest does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions as described herein.

9. For the purposes of settling the matters set forth herein, Qwest agrees to implement a Compliance Plan related to its telemarketing and equal access practices and consisting of the components delineated below. The Compliance Plan will be for a period of 12 months following the Effective Date of the Adopting Order.

(a) Not later than 20 days after the Effective Date of the Adopting Order, Qwest will adopt revised policies and procedures regarding outbound telemarketing (OBTM) campaign management and the creation, approval and distribution of lists of potential customers and telephone numbers to telemarketers (*i.e.*, "leads"). The written policies and procedures will include the following requirements:

(i) For all campaign changes, Qwest managers will be required to execute a "Change Setup Form," which will require signed approval and acknowledgement from the vendor(s).

(ii) Any significant change (as determined by the responsible Qwest OBTM manager) to a product offering or to a telemarketing campaign will require the closing of the telemarketing campaign and the return of all leads to Qwest. Qwest, in turn, will issue new leads as part of a new telemarketing campaign.

(iii) All instructions communicated via e-mail or voicemail to Qwest's data clearinghouse vendor will require written acknowledgement and confirmation by that vendor via e-mail.

(b) Not later than 30 days after the Effective Date of the Adopting Order, Qwest will provide the written policies and procedures (outlined in paragraph 9(a) above) to its employees in database marketing, consumer telemarketing, and small business telemarketing departments. Qwest will require these employees to acknowledge in writing that they have read and understand the policies and procedures. Not later than 45 days after the Effective Date of the Adopting Order, Qwest will provide the written policies and procedures to its outside telemarketing and data clearinghouse

vendors. Qwest will require each vendor to execute a pledge indicating that it has read and understands the policies and procedures.

(c) Not later than 20 days after the Effective Date of the Adopting Order, Qwest will institute an “Escalation Alert” process to define clear responsibility for data record quality and timeliness in telemarketing campaigns. The “Escalation Alert” process will be administered by Qwest’s data clearinghouse vendor, with support from Qwest.

(d) Not later than 30 days after the Effective Date of the Adopting Order, Qwest will create a manual that centralizes all reports and agreements associated with OBTM. Each document in the manual will be assigned to a document owner, who will provide updates to the manual as they occur.

(e) Not later than 20 days after the Effective Date of the Adopting Order, Qwest will provide written policies and procedures to all employees responsible for acquiring new residential local exchange service subscribers in Qwest’s in-region 14-state operating territory and who work in database marketing, consumer telemarketing, and small business telemarketing departments, and all outside telemarketing and data clearinghouse vendors, describing Qwest’s practice in all OBTM calls aimed at acquiring new residential local service customers to notify such potential customers, if they choose to order Qwest local service, of their right to select a long distance provider of their choice, and upon such customers’ request, customers will be provided with a list of the companies available for selection by the customer. Qwest will require each such Qwest employee or vendor to execute a pledge indicating it has read and understands the policies and procedures.

10. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation.

11. Qwest agrees that it will make a voluntary contribution to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within 10 calendar days after the Effective Date of the Adopting Order. Qwest must make this payment by check, wire transfer, or money order drawn to the order of the Federal Communications Commission. The check, wire transfer, or money order should refer to “Acct. No. 200432080142” and “FRN No. 0003605953.” If Qwest makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If Qwest makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

12. The Bureau agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the Effective 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 Investigation. The Bureau also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this

Investigation through the Effective 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 Qwest's basic qualifications, including its character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 or 271 of the Act against Qwest or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding.

13. 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 Bureau issues an Order adopting the Consent Decree without change, addition or modification.

14. Qwest's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

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

16. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Qwest nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Qwest shall waive any statutory right to a trial *de novo*.

17. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

18. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Qwest does not consent) that provision will be superseded by such Commission rule or order.

19. This Consent Decree may be signed in counterparts.

David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission

Date

Dan L. Poole
Vice President, Regulatory Law
Qwest Communications International Inc.

Date