

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

In the Matter of	)	
	)	
Qwest Communications	)	
International Inc.	)	File No. ENF-99-11
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 916EF008
	)	

**CONSENT DECREE**

1. The Federal Communications Commission (“FCC” or “Commission”) and Qwest Communications International Inc. (“Qwest”) by their attorneys or authorized representatives, hereby enter into a Consent Decree terminating a Commission investigation concerning Qwest’s alleged violations of Section 258 of the Communications Act of 1934, as amended, and the Commission’s policies and rules regarding preferred interexchange and/or intraLATA carrier (“PIC”) conversions. Qwest is a common carrier that provides interstate interexchange telecommunications services pursuant to tariffs on file with the Commission.

2. On October 19, 1999, the Commission issued to Qwest a Notice of Apparent Liability for Forfeiture (“NAL”).<sup>1</sup> The Commission determined that Qwest had apparently violated section 258 and Commission rules and orders by changing the PICs of thirty consumers without their authorization. After reviewing the facts and circumstances surrounding the alleged violations, the Commission found Qwest apparently liable for forfeiture in the amount of two million and eighty thousand dollars (\$2,080,000). The Commission and Qwest thereafter entered into negotiations and have agreed to terminate this proceeding pursuant to the terms and conditions set forth herein.

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. or any other affiliated entity, subsidiary, parent, successor or assign, controlling or controlled by Qwest Communications International, Inc. However, in the event that Qwest completes a merger with U S West, Inc., during the effectiveness of this decree, the term “Qwest” shall not include the local exchange operations of either U S West or any U S West affiliate providing local telecommunications services;

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<sup>1</sup> Qwest Communications International Inc., Notice of Apparent Liability for Forfeiture, FCC 99-299 (Oct. 19, 1999).

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- d) "Parties" means Qwest and the Commission;
  - e) "Adopting Order" means an Order of the Commission adopting the terms and conditions of this Consent Decree;
  - f) "Effective Date" means the date on which the Commission adopts the Adopting Order;
  - g) "PIC Change" means an Order or request transmitted by an interexchange carrier to a local exchange carrier requesting a change of a customer's preferred interexchange and/or intraLATA carrier;
  - h) "Letter of Agency" or "LOA" means a written authorization signed by the customer authorizing a PIC change;
  - i) "Informal Complaint" or "Consumer Complaint" means a complaint filed under 47 C.F.R. §§ 1.711-1.717;
  - j) "Distributor" means a third party entity engaging in face-to-face marketing or engaging in telemarketing of long distance telecommunications to consumers on behalf of Qwest.
  - k) "LEC" means local exchange carrier.

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

5. The Parties agree that this Consent Decree shall become effective on the date on which the Adopting Order is released by the Commission and shall expire three (3) years after its effective date. 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 any Adopting Order.

7. Qwest waives any further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of the Adopting Order or this Consent Decree.

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

9. This Consent Decree shall constitute a final settlement between Qwest and the Commission of the above-captioned NAL proceeding and any proceeding based on allegations of unauthorized PIC changes occurring on or before the effective date of this Consent Decree; provided, however, that this Consent Decree is not dispositive of (1) the rights of any

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complainant who has filed (or should file) a formal or informal complaint against Qwest or (2) any matter(s) within the jurisdiction of any other federal or state agency.

10. This Consent Decree is for settlement purposes only. Nothing herein shall constitute findings as to the matters raised in the NAL, and Qwest does not admit any alleged violation or liability for the specific acts described in the NAL or in any informal complaints received by the Commission on or before the effective date of this Consent Decree.

11. Qwest shall make a voluntary contribution to the United States Treasury in the total amount of \$1,500,000 (one million five hundred thousand dollars). Payment shall be paid within 30 days of the effective date of this Consent Decree. Payment shall be made, without further protest or recourse, by check or money order drawn to the order of the Federal Communications Commission, shall reflect "FCC File No. ENF-99-11, NAL/Acct. No. 916EF008", and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

12. Qwest shall not knowingly submit to any LEC any preferred carrier change request unless Qwest has complied with all Commission rules and orders concerning preferred interexchange and/or intraLATA carrier changes, in effect, or as they may be hereafter modified or amended.

13. As of the effective date of the Order adopting the Consent Decree, Qwest shall verify all consumer PIC change requests obtained through a signed LOA during face-to-face marketing according to the procedures set forth in 47 C.F.R. § 64.1150 (c) or (d). Consistent with Paragraph 28 of this Decree, Qwest shall comply with all valid and effective rules adopted in CC Docket 94-158, or any other Commission docket regarding verification of all other sales. Qwest will revise its third party verification process to require that any customer confirming a residential sale, without undue prompting or suggestion by the third-party verifier, state his or her name and the telephone number(s) for which the preferred carrier is to be changed.

14. Within 30 days from the Effective Date, Qwest shall distribute to all its distributors a copy of its updated Anti-Slamming Advisory, a copy of which is attached hereto. Qwest shall provide training to all new distributors regarding federal and state prohibitions against unauthorized PIC changes, and shall conduct annual "refresher" training to all distributors. In addition, Qwest shall require every sales representative involved in any way in the marketing of Qwest service to review and sign an anti-slamming advisory, at least once every six months, acknowledging their understanding of its requirements and verifying their intent to comply. If Qwest determines that any individual has forged a customer's signature on an LOA or has committed other willful violations of the Commission's rules, the offending individual will be immediately terminated and permanently barred from soliciting orders for Qwest. Qwest will continue to police other violations of its policies and the FCC's rules, and will require remedial measures up to and including termination for individuals and/or distributors that submit a specified number of improper PIC-change customer orders.

15. Within 30 days of the Effective Date, Qwest shall implement procedures to monitor the performance of distributors regarding submission of PIC-change orders, to identify

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distributors that submit unauthorized PIC changes to Qwest, and to promptly reduce such improper PIC-change customer orders and discipline such distributors.

- a) If the distributor demonstrates any pattern or practice of violating federal PIC-change rules and orders, such conduct shall subject the distributor to immediate termination of its relationship with Qwest.
- b) If the number of improper PIC change orders submitted by a distributor during any calendar month exceeds 2 percent of the total number of PIC-change orders submitted by the distributor during the month, Qwest will implement remedial measures designed to improve the distributor's performance. For purposes of this paragraph, an order shall be deemed to be an "improper PIC change order" if, within 14 days after notice to Qwest of a dispute by the consumer, (1) Qwest cannot produce evidence of an signed LOA and/or a record of TPV that complies with the provisions of this Consent Decree, or (2) the LOA or TPV is forged or otherwise fraudulent. Remedial measures shall, at a minimum, include:
  - 1) mandatory retraining by Qwest of the distributor's sales personnel which will focus on proper sales techniques and methods to reduce rejected orders;
  - 2) the distributor's implementation of specific changes designed to reduce the incidence of bad orders;
  - 3) the distributor's reaffirmation and re-signing of Qwest's Anti-Slamming Advisory;
  - 4) the distributor's performance of a self-audit on a monthly or weekly basis as necessary under the circumstances.
  - 5) The charge-back of all commissions or fees earned for each improper PIC change plus a financial penalty equal to at least fifty percent (50%) of any commissions or fees earned for each order.

16. Upon entering into any distributor contract, and within 30 days of the effective date of this Consent Decree for existing contracts, Qwest shall require its distributors to sign an agreement with Qwest specifying that any of the distributor's employees found to have engaged in practices that violate the effective federal PIC-change rules and orders shall be subject to disciplinary action up to and including immediate termination. Qwest will not rehire any employee or agent who has been terminated by Qwest or its distributors for violating the federal PIC-change rules and orders.

17. Qwest agrees that in the event it pays an up-front commission to distributors for accounts switched to Qwest, it shall withhold twenty percent (20%) of the commission for at least 60 days to recover any penalties and charges that may result from any unauthorized orders. Such holdback procedures will allow the customer to receive the first bill and contact Qwest if the customer did not authorized the PIC-change. If a distributor has at least one year of continuous performance without exceeding the threshold described in paragraph 15(b), Qwest may, in its discretion, pay up-front commissions without regard to the holdback described in this

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paragraph, *provided, however*, that if, at any time thereafter, the distributor exceeds the threshold described in paragraph 15(b), Qwest shall hold back up-front commissions as described above. Qwest will review its holdback procedures on a quarterly basis to ensure that the amounts withheld are adequate.

18. Qwest agrees that new distributors will be screened to ensure that they meet Qwest's standards for quality and reputability and have not engaged in slamming or other improper sales activities. Qwest will place all distributors that begin submitting orders on or after the Effective Date on a probationary status for the first 90 days of the relationship. During this probationary period, Qwest will conduct performance reviews to ensure the distributor meets acceptable standards of performance. If, during this probationary period, the number of improper PIC change orders submitted by the distributor during any calendar month exceeds 2 percent of the total number of PIC-change orders submitted by the distributor during the month, Qwest will immediately terminate its relationship with the distributor. For purposes of this paragraph, the term "improper PIC change orders" shall have the meaning defined in paragraph 15(b) above. In addition, during the probationary period, new distributors shall receive up-front commissions from Qwest in accordance with paragraph 17 above.

19. Qwest shall inspect each LOA prior to submitting an order to the LEC. All incomplete LOAs (*e.g.* missing signature, telephone number, or other required information) will be returned to the distributor without being processed.

20. Qwest shall maintain a "stay away" list of customers who have either (1) claimed an unauthorized switch in the past or (2) expressed their intent never to purchase Qwest's services. Qwest will verify orders against this list before submitting a PIC change to a LEC. Customers will remain on the stay away list for a minimum of one year, unless they request to be removed from the list. As of the effective date, Qwest will initiate a review of all complaints alleging unauthorized preferred carrier changes by Qwest, which it received within the twelve months prior to the effective date from a state agency, a federal agency, or from a consumer directly, based on any record in Qwest's custody. In all cases where Qwest concludes that an unauthorized preferred carrier change occurred, it will promptly issue a credit for all preferred carrier change fees and to have all calls subject to the switched services related to the prior carrier's rates. Consistent with Paragraph 28 of this Decree, at such time as the Commission's slamming liability rules in Docket 94-129 become effective, Qwest will ensure that its consumer credit practices comply with them. At six-month intervals, the Company will submit reports to the Commission detailing the number of PIC disputes received, the number of credits issued, and the total dollar amount of any credits issued. For purposes of these reports, Qwest shall include all written disputes forwarded by the FCC, a state commission or agency, a LEC, or from a consumer directly.

21. Qwest shall take any necessary steps to monitor and ensure that, in connection with the advertising, promotion, marketing, offering for sale or sale of interstate, interexchange and/or intraLATA telecommunications services, all individuals or entities which are in any way involved in the marketing of Qwest's services to consumers shall comply with paragraphs 12, 13 and 14 of this Consent Decree. Qwest shall demand prompt remedial action (including but not limited to, disciplining or terminating responsible individuals, and terminating or recovering commissions or surcharges paid to a distributor) against any individual or entity that is

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submitting, or has submitted in the past, requests for unauthorized PIC changes, or is not in compliance with paragraphs 12, 13 and 14 of this Consent Decree.

22. Qwest shall engage an independent auditor on an annual basis to conduct an examination of its reporting and data tracking mechanisms and the enforcement procedures based upon those reports. This examination will be supervised by persons licensed to provide public accounting services and shall be conducted in accordance with the relevant standards of the AICPA. The independent auditor shall provide an opinion (with exceptions, if any, noted) in a written report to the Board of Directors of Qwest. Qwest also will require its distributors to report, on at least a quarterly basis, the results of an internal audit of its anti-slamming procedures.

23. Qwest shall devise and implement a nationwide campaign to inform consumers who do not speak English as their primary language of the dangers of slamming and their rights in the event their preferred carrier has been changed without authorization. Qwest will distribute brochures and place media advertising for consumers who do not speak English as their primary language, in their language of choice. Qwest agrees to bear the cost of all media advertising and/or consumer brochures in support of this nationwide campaign and that the campaign will be completed within 6 months of the Effective Date.

24. During the effectiveness of this Consent Decree, and for a period of three years thereafter, Qwest shall maintain and make available to the Commission or Bureau, within 14 days of the receipt of a written request from the Commission or Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to, advertisements, sales scripts, manuals or presentations, written advisories to sales distributors and agents and required responses to those advisories, Letters of Agency, PIC-change records, billing records, and all consumer complaints including those filed directly with Qwest and those filed against Qwest in any local, state, or federal jurisdiction served or otherwise submitted to Qwest. The record of consumer complaints shall include the name, address, and telephone number of each complainant, Qwest's response, and the final disposition of each complaint. Nothing in this Consent Decree shall limit Qwest's right to claim that the information requested is non-releasable proprietary information under the Freedom of Information Act, 5 U.S.C. § 522(b) and/or the Trade Secrets Act, 18 U.S.C. § 1905. The Commission agrees to allow Qwest an opportunity to establish such claims in accordance with the Commission's rules at 47 C.F.R. §§ 0.457, 0.459.

25. Qwest represents that it has satisfied the complaints filed with the Commission by the thirty consumers that gave rise to the Commission's NAL.<sup>2</sup>

26. The Commission further agrees that in the absence of substantial additional and material facts, it shall not on its own motion institute forfeiture proceedings against Qwest based on informal complaints of unauthorized PIC changes occurring before the effective date of this Consent Decree. The Commission will serve on Qwest consumer complaints concerning alleged

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<sup>2</sup> See Qwest Communications International Inc. Response to Notice of Apparent Liability for Forfeiture, File No. ENF-99-11, NAL/Acct. No. 916EF008, dated November 18, 1999.

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unauthorized switches occurring prior to the effective date, in accordance with the procedures and rules governing such complaints. Qwest agrees to resolve these complaints to the extent required by the Communications Act and the Commission's rules and regulations. Nothing in this Consent Decree shall prevent the Commission from adjudicating formal complaints filed against Qwest, or from instituting a new investigation or enforcement proceedings against Qwest in the event of future misconduct.

27. In light of the covenants and representations contained in this Consent Decree, and in express reliance thereon, the Commission agrees that adoption of this Consent Decree shall serve to resolve all allegations that are the subject of the NAL issued in the above-captioned proceeding without any finding of ultimate liability on the part of Qwest. The Commission further agrees that in the absence of substantial additional and material facts, the Commission shall not on its own motion institute against Qwest new proceedings of any kind arising out of the PIC changes and consumers that were the subject of the NAL.

28. The Parties agree that any provision of the Consent Decree, except for the provisions concerning additional independent third party verifications of signed LOAs, affected by or inconsistent with any subsequent rule or order adopted by the Commission, will be superseded by such Commission rule or order.

29. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For Qwest Communications International  
Inc.

/s/ Magalie Roman Salas  
Magalie Roman Salas  
Secretary

/s/ R. Steven Davis  
R. Steven Davis  
Senior Vice President

7/20/00  
Date

6/22/00  
Date

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## **“QWEST’S POLICIES AND PROCEDURES REGARDING SLAMMING PREVENTION”**

### **ADVISORY TO ALL REPRESENTATIVES SELLING QWEST COMMUNICATION CORPORATION’S SERVICES:**

Unauthorized switching of long distance service, or “slamming,” is the number one problem facing the long distance industry today. Slamming is illegal, harmful to consumers, and will not be tolerated by Qwest. Qwest offers its customers the highest quality, reliability and value in the industry. These attributes are more than enough to attract customers, and a sales representative should never resort to fraud, deceit or trickery to generate sales.

The following document is designed to educate every person involved in the sale or marketing of Qwest’s long distance services about the causes of unauthorized switches, Qwest’s zero tolerance for such switches, and what can be done to prevent unauthorized switching. ALL REPRESENTATIVES AND DISTRIBUTORS SELLING QWEST LONG DISTANCE SERVICE MUST CAREFULLY READ THIS ADVISORY AND MUST READ AND SIGN THE ZERO SLAMMING PLEDGE ATTACHED TO THIS DOCUMENT. A signed Zero Slamming Pledge must be forwarded to Qwest before any individual begins marketing services on behalf of Qwest and must be re-affirmed at least every 6 months thereafter.

#### **A. COMMON CAUSES OF SLAMMING:**

- Incorrect telephone number submitted on the Letter of Authorization or “LOA” - means that incorrect telephone number is switched without the customer’s written consent.
- The submitted LOA is illegible and causes the person that keys the order into the system to enter the wrong name and/or phone number.
- The person who "authorized" switching carriers really didn't have the authority to make the switch. Sometimes children, roommates, receptionists, secretaries or assistants authorize a switch to qualify for some sort of premium or other inducement even though they lack the authority to make decisions on behalf of the subscriber.
- A simple misunderstanding when one partner doesn't tell the other partner or accounts payable personnel about selecting a new long distance service. This is especially common when the person authorizing the switch is not the person who reviews or pays the bills. The bill-paying partner or accounts payable representative sees a new long distance carrier name and thinks something is wrong. Please ask your customers to inform the appropriate persons within the household or company about the change in long distance carriers.
- Signing someone up just to "get the sale" or reach a qualification or commission level. Laziness and “cutting corners” can lead to mistakes, misunderstandings and improper orders. **Sales agents should note that forging the signature of another person is illegal and grounds for immediate dismissal.**
- Signing someone up, without the customer’s knowledge, as a result of spending a lot of time with a decision-maker and assuming that the person would be satisfied with Qwest service.



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## **B. EFFECTS OF SLAMMING:**

- It is illegal and will not be tolerated by Qwest!
- Creates a bad image and adversely affects Qwest's and the Sales Agent/Distributor's reputation.
- Frustrating experience for the subscriber that was slammed.
- Takes time to investigate and correct.
- If we can get information verified (correct), it will save on:
  1. Order rejects
  2. Returned mail
  3. Time to process valid and accurate orders.
- Substantial monetary penalties and costs are assessed against Qwest when a subscriber is improperly switched. These charges are passed back by Qwest to the distributor and/or individual sales agent involved, and all commissions earned on the account will be forfeited. Repeated slamming activity leads to serious consequences for the agent, including termination of the sales agent relationship with Qwest.

QWEST AS WELL AS FEDERAL, STATE, AND LOCAL REGULATORY AGENCIES VIEW "SLAMMING" AS A VERY SERIOUS PROBLEM. THE FCC AND STATES ROUTINELY IMPOSE SIGNIFICANT FINES ON A PER VIOLATION BASIS.

## **C. HOW A REPRESENTATIVE/DISTRIBUTOR CAN PROTECT AGAINST SLAMMING:**

- You are strongly encouraged to verify information against each new customer's actual telephone bill for each LOA.
- You must make sure that the person signing the LOA is a person with authority to make decisions for the telephone line(s) to be switched. It is essential that the person signing the LOA has authority to change long distance carriers. Note that children, roommates, receptionists, secretaries and assistants typically do not have the authority to change long distance carriers for the subscriber or company. If the person signing the LOA is different from the person with the actual authority to do so, you should attempt to contact the other person. While this policy might jeopardize some sales orders, it should give you a chance to retain sales by demonstrating your concern and professionalism.
- Where possible in face to face sales situations, verify the person's identity and signature against a valid, government-issued ID, such as a driver's license. Note: this procedure is MANDATORY in certain states.
- Take your time. Review the LOA for accuracy and legibility, especially the telephone number. Confirm the person's telephone number.
- NEVER sign someone else's name on an LOA or any other document! Forgery will get you fired.
- Don't force a sale that is not there.

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**DISTRIBUTOR’S ACKNOWLEDGMENT  
AND AGREEMENT NOT TO ENGAGE IN SLAMMING**

This will verify that on behalf of \_\_\_\_\_, I have received, read, understand, and will distribute the document entitled “QWEST’S POLICIES AND PROCEDURES REGARDING SLAMMING PREVENTION” to all individuals responsible for selling Qwest Communications Corporation’s Service. We fully understand and appreciate our obligations as a Qwest sales agent not to engage in or facilitate the practice of “slamming” customers. We pledge that we will not submit an order to change long distance service to Qwest unless it has been fully and knowingly authorized by the subscriber and has been verified in accordance with Qwest’s policies and procedures, as they may be modified from time to time. We understand that Qwest will not tolerate occurrences of "slamming", and that Qwest will take whatever actions are necessary to protect against slamming including, without limitation, termination of the sales agent relationship and enforcement of all applicable legal rights and remedies.

\_\_\_\_\_  
Signature Of Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

Business Phone Number \_\_\_\_\_

\_\_\_\_\_  
Print Name of Company

Channel Code \_\_\_\_\_

Organization Code \_\_\_\_\_

Please remit this form within fourteen days of receipt to: Qwest Communications Corporation., 4650 Lakehurst Court, Dublin, Ohio 43016, Attn: **Legal Dept.**

Signature Of Representative for \_\_\_\_\_.

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**ZERO SLAMMING PLEDGE**

**\*\*\*\*\* THIS FORM MUST BE SIGNED AND RETURNED BY EVERY  
INDIVIDUAL MARKETING QWEST SERVICES \*\*\*\*\***

This will verify that I have received, read, understand, and will comply with the document entitled "QWEST'S POLICIES AND PROCEDURES REGARDING SLAMMING PREVENTION". I fully understand and appreciate my obligations as a Qwest sales agent or independent contractor not to engage in or facilitate the practice of "slamming" customers. I pledge that I will not submit an order to change long distance service to Qwest unless it has been fully and knowingly authorized by the subscriber and has been verified in accordance with Qwest's policies and procedures, as they may be modified from time to time. I understand that Qwest will not tolerate occurrences of "slamming", and that Qwest will take whatever actions are necessary to protect against slamming including, without limitation, termination of the sales agent relationship and enforcement of all applicable legal rights and remedies. I understand that instances of forgeries or willful violations of applicable rules will result in my immediate termination and a permanent ban on soliciting services on behalf of Qwest.

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Signature Of Representative Selling Qwest Long Distance

Date \_\_\_\_\_

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Print Name

Home Phone Number \_\_\_\_\_

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Print Name of Company

Channel Code \_\_\_\_\_

Organization Code \_\_\_\_\_