

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Qwest) Application No. C-1830
Corporation, Denver, Colorado,)
filing its notice of intention)
to file Section 271(c)) MOTION TO REOPEN
application with the FCC and) 271 PROCEEDINGS
request for Commission to verify) DENIED
Qwest Corporation's compliance)
with Section 271(c).) Entered: June 12, 2002

BY THE COMMISSION:

1. On May 14, 2002, AT&T Communications of the Midwest, Inc. and AT&T Local Services, on behalf of TCG Omaha (collectively AT&T), filed with this Commission a Motion to Reopen Proceedings in the above-referenced docket. In said Motion, AT&T sought an order from this Commission reopening the record in the 271 proceedings in order to allow admission of additional evidence relating to certain alleged unfiled, secret agreements between Qwest Corporation (formerly known as US West) and some new entrants. AT&T alleged that such agreements related directly to the provisioning of interconnection services by Qwest, but were not filed as they should have been in accordance with 47 U.S.C. Sections 251 and 252.

2. On May 20, 2002, Community Internet Systems, Inc. filed a Concurrence with AT&T's Motion to Reopen Proceedings.

3. Qwest filed its Opposition to AT&T's Motion on May 21, 2002, objecting to AT&T's attempt to delay the Section 271 proceeding. According to Qwest, the Federal Communications Commission (FCC) and reviewing courts have repeatedly emphasized that matters such as those alleged by AT&T are best addressed in proceedings separate from Section 271.

4. An oral argument was held on May 29, 2002, at 11:00 a.m. in the Commission Hearing Room.

O P I N I O N A N D F I N D I N G S

5. The Commission is greatly concerned about the issues raised by AT&T in its recent filings concerning alleged unfiled, secret Qwest agreements in Minnesota. Any findings that these allegations are true, regardless of penalty or lack thereof, bring into question the participants' long-term commitment to fulfill the dictates of Congress to ensure markets are equally accessible to all parties.

6. According to arguments by Qwest before the Commission, both parties have engaged in such "secret agreements" under the guise of the need for confidentiality. Unlike in Minnesota and other states, the Nebraska Commission has no other evidence of this allegation. While Covad Communications Company and McLeodUSA do have lawfully filed agreements in the state of Nebraska, this Commission has no evidence that secret agreements exist in Nebraska with any of the parties included in the investigations in Minnesota and other states. We only have the statement by a Qwest attorney who, in answering a question of a Commissioner, pointed a finger at others as they included themselves.

7. This Commission would find the existence of secret agreements, if they are contrary to the public interest, abhorrent. The 1996 Congress, which passed the Telecommunications Act (the Act), expected local telecommunications companies to open their markets in exchange for the prize of access to long distance networks. They did not expect gamesmanship and violations of the law to flaunt the intent of the Act. If the allegations are true, it is an act of arrogance and utter disregard for the law.

8. If true, such secret agreements and any similar actions, which are contrary to the public interest, taint the 271 process throughout the entire 14-state region and raise questions as to the *intent and will* to cooperatively work to maintain existing markets and to continue efforts for future competitive entrants.

9. In response to the allegations, Qwest filed a petition with the FCC on April 23, 2002, asking the FCC to define once and for all the scope of incumbent local exchange-competitive local exchange agreements. The FCC has yet to act on the petition.

10. In summation, while these matters are deeply troubling, they serve as notice that ongoing oversight is absolutely necessary. However, inasmuch as this issue is presently before the FCC, the Nebraska Commission, at this time, denies AT&T's Motion to Reopen the 271 proceeding.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that AT&T's Motion to Reopen the 271 Proceeding is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of June, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director