



Department of Justice

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**JUSTICE DEPARTMENT RECOMMENDS APPROVAL OF QWEST'S
APPLICATION TO PROVIDE LONG DISTANCE SERVICES
IN NEW MEXICO, OREGON, AND SOUTH DAKOTA**

WASHINGTON, D.C.--The Department of Justice today recommended that the Federal Communications Commission (FCC) approve Qwest's application to provide long distance services in New Mexico, Oregon, and South Dakota. Also in its evaluation, the Department deferred to the FCC on an issue of statutory interpretation involving the Telecommunications Act.

"The available evidence suggests that generally, Qwest has succeeded in opening its local telecommunications markets in New Mexico, Oregon, and South Dakota," said R. Hewitt Pate, Acting Assistant Attorney General in charge of the Department's Antitrust Division.

"Competitors have made progress in penetrating the business markets, and the Department believes there are no longer any material obstacles to residential competition created by Qwest."

The Department pointed out that issues had been raised regarding Qwest's compliance with the requirements of Track A of the Telecommunications Act. Track A requires Qwest to show the existence in the state of at least one competitive local exchange carrier (CLEC) that provides telephone exchange service to business and residential customers exclusively or predominantly over its own facilities. Track A issues were raised regarding Qwest's application

due to the lack of wireline competition in New Mexico for residential customers by CLECs using their own facilities or unbundled network elements. In its application, Qwest presented evidence of residential competition by resellers in New Mexico, along with evidence of a PCS company providing service in the state. The Department deferred to the FCC's judgment in interpreting the Track A requirements of the statute, at the same time pointing out that the FCC's analysis of PCS competition in the state may not be predictive of the way in which the Department would analyze the issue in an antitrust matter. In order to evaluate the application under its standard—whether the market is fully and irreversibly open to competition—the Department did not need to resolve the issue of whether statutory Track A requirements were met.

The Department provided its competitive analysis in an evaluation of Qwest's application to provide long distance services in New Mexico, Oregon, and South Dakota under Section 271 of the Telecommunications Act of 1996.

Since the break-up of the integrated Bell system as part of the AT&T divestiture, the independent Bell Operating Companies, or BOCs, have been barred from providing long distance services in their respective regions, first as part of the divestiture decree, and now under the terms of the Telecommunications Act. Under Section 271 of the Act, a BOC, such as Qwest, may not provide in-region long distance services until it demonstrates to the FCC that it has met a variety of legal requirements designed to open the local telecommunications markets in a particular state to competition.

In considering whether to approve a BOC's application for long distance authority in a particular state, the FCC must consult with the Department of Justice and give "substantial weight" to its assessment of competitive conditions and whether the BOC should be allowed to provide in-region long distance services.

Qwest filed its application with the FCC on January 15, 2003. Under the terms of the Act, the FCC must approve or deny the application within 90 days. A copy of the Department's evaluation will be available at:

<http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.

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