

**STAFF RECOMMENDATION**  
**February 3, 2010**

**Qwest Corporation**  
**Request to Withdraw SGAT Available**  
**Terms/Conditions**  
**Application**

**Case No. PU-07-314**

I recommend that counsel send a determination that it is not within the Commission's authority to approve or reject Qwest's request to withdraw the SGAT.

**Background**

Section 252(f)(1) of the Telecommunications Act states that a Bell operating company *may* prepare and file with a State commission a statement of the terms and conditions (SGAT) that such company generally offers within that State to comply with the requirements of section 251.<sup>1</sup> (*emphasis added*).

Section 251 requires that a local exchange carrier offer for resale its telecommunications services, provide number portability, provide dialing parity, afford access to rights-of-way, establish reciprocal compensation arrangements for transport of telecommunications, negotiate agreements in good faith, provide interconnection, provide access to unbundled network elements, and provide physical or virtual collocation of equipment.

In addition, Section 271 requires that, in order to obtain entry to offer interLATA toll services, Qwest must have either (1) one or more binding interconnection agreements that were approved under Section 252 or (2) an SGAT approved by the State commission.

The Act provides for State commission approval of an SGAT. Section 252(f)(2) states that a State commission may not approve an SGAT unless such statement complies with section 252(d) pricing standards and section 251.

North Dakota Century Code section 49-21-01.7(10) provides power for the commission to receive and approve or reject an SGAT.

Qwest filed its original SGAT for Commission approval on June 9, 2000. Qwest states that, since May 2005, it stopped allowing CLECs to adopt the SGAT as an interconnection agreement.

On June 14, 2007, Qwest asked the Commission that its SGAT be withdrawn with the exception that it would continue to make its Performance Indicator Definitions (PIDs) and the Performance Assurance Plan (PAP) available. Qwest states that the absence of an SGAT in no way impacts or diminishes the Commission's input or control over the terms

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<sup>1</sup> If the SGAT is gone, how does Qwest show that it complies with the requirements of section 251? This is likely a concern for the FCC and not the state?

and conditions of Section 252 agreements and that the Commission maintains authority to serve as arbitrator, to render final decisions on disputed interconnection agreement terms and conditions, and to reject any agreement or amendment that is found to discriminate against a telecommunications carrier not a party to the agreement or that is not consistent with the public interest or does not include North Dakota specific language requirements.

North Dakota Century Code section 49-21-01.7(9) provides power for the commission to approve or reject agreements for interconnection, services, or network elements.

On October 15, 2009, Qwest requested an order approving withdrawal of the SGAT.

**CONCLUSION:** It appears it is the Telecommunications Act that governs the filing of an SGAT with the Commission and the Act does not mandate the filing of an SGAT, even though Qwest did file an SGAT. The SGAT is intended serves as evidence that Qwest complies with the requirements of section 251, an FCC requirement. My opinion is that Commission has no authority to require that an SGAT be on file with the Commission, and only has authority to approve or reject an SGAT that has been filed. It appears the Commission cannot approve or reject Qwest's request to withdraw the SGAT.

PJF