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Qwest

May 27, 2009

RECEIVED

MAY 27 2009

Mr. Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

PUBLIC SERVICE COMMISSION

**Re: Reclassifying the Fargo-Moorhead Wire Center Pursuant to the Triennial Review Remand Order**

Dear Mr. Nitschke:

Qwest Corporation ("Qwest") files this letter to notify the North Dakota Public Service Commission ("Commission") that it intends to redesignate the Fargo-Moorhead wire center as Tier 1 for DS3 Transport and Dark Fiber based on the number of fiber-based collocators in that central office.

In 2008, Qwest petitioned the Commission to open a docket for approval of Qwest's non-impaired wire center list in North Dakota. This petition declared that the West Fargo and Fargo-Moorhead wire centers were "Tier 2" non-impaired wire centers for DS3 Transport and Dark Fiber, meaning that Qwest no longer has any obligation to provide these services and facilities to CLECs as unbundled network elements ("UNEs") pursuant to the Federal Communications Commission's ("FCC's") *Triennial Review Remand Order* ("TRRO"). The Commission docketed this petition as Docket No. PU-08-373. Commission staff concluded the Commission does not have jurisdiction to address Qwest's petition.<sup>1</sup> Qwest therefore withdrew its petition on December 9, 2008.

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<sup>1</sup> Staff concluded that applying the general policy that the Commission only has authority given to it by the Legislature, there are only two types of proceedings through which the Commission can address the non-impairment status of a Qwest wire center. First, under NDCC 49-21-01.7(8), the Commission has the authority to mediate or arbitrate interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996. Thus, if a CLEC requests interconnection from Qwest that includes DS1 or DS3 high-capacity facilities and the CLEC finds that Qwest does not intend to provide such interconnection (because Qwest believes the wire center qualifies for non-impairment designation), the CLEC may ask the Commission to arbitrate pursuant to Section 252 and NDCC 49-21-01.7(9). Second, under NDCC 49-21-01.7(10), the Commission has authority to receive and approve or reject a statement of generally available terms ("SGAT") under 252(f) of the Act.

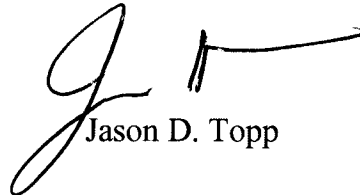
Mr. Darrell Nitschke

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By this letter, Qwest petitions the Commission that it believes the Fargo-Moorhead wire center should be redesignated as Tier 1 and Qwest has filed a petition for approval of redesignation of this wire center in Minnesota. Based on the Commission's prior handling of this issue, Qwest does not plan on filing in North Dakota unless directed to do so. Thereafter, if a CLEC in North Dakota requests interconnection from Qwest that includes unbundled loops or DS1 or DS3 high-capacity facilities in a North Dakota wire center that Qwest believes qualifies for non-impairment designation, Qwest will deny such request for interconnection unless such CLEC has filed an arbitration under Section 252 and NDCC 49-21-01.7(8) and the Commission has found that the particular North Dakota wire center is not non-impaired.

Very truly yours,



Jason D. Topp

JDT/bardm

cc: Kent Blickensderfer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of May, 2009, the original and seven copies of the foregoing **Letter re Reclassifying the Fargo-Moorhead Wire Center Pursuant to the Triennial Review Remand Order** were served upon the following party:

Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480

and copies sent electronically or via U.S. mail, addressed to the following:

Kent Blickensderfer  
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Dianne Barthel