



1 unbundled mass market switching and unbundled shared transport still must be filed under  
2 Section 252. The recent FCC Order, at Paragraph 16, provides:

3           Specifically, we conclude that the appropriate interim approach here is to  
4 require incumbent LECs to continue providing unbundled access to switching,  
5 enterprise market loops, and dedicated transport under the same rates, terms, and  
6 conditions that applied under their interconnection agreements as of June 15,  
7 2004. These rates, terms, and conditions shall remain in place until the earlier of  
8 the effective date of final unbundling rules promulgated by the Commission or six  
9 months after the Federal Register publication of the Order, except to the extent  
that they are or have been superseded by (1) voluntary negotiated agreements, (2)  
an intervening Commission order affecting specific unbundling obligations (e.g.  
an order addressing a pending petition for reconsideration), or (3) (with respect to  
rates only) a state public utility commission order raising the rates for network  
elements.

10           The FCC Order has required by temporary rule that “unbundled access to switching,  
11 enterprise market loops, and dedicated transport<sup>1</sup>” remain a Section 251(c) obligation and  
12 agreements (such as this one) covering these items must be filed under Section 252 for state  
13 approval. Therefore, while parties can negotiate changes to rates, terms, and conditions in place  
14 June 15, 2004, they cannot negotiate away the Section 252 filing requirement.<sup>2</sup> According to the  
15 FCC Order, the commercial agreement must be filed for state approval and, therefore, Qwest’s  
16 Motion to Dismiss should be denied.

## 17 **CONCLUSION**

18           Qwest’s Motion to Dismiss relies on *USTA II* and an October 2002 FCC decision.<sup>3</sup>  
19 However, Qwest’s reliance on these two opinions is misplaced now that the FCC has issued its  
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22 <sup>1</sup>Footnote 3 of the FCC’s Order clarifies that “references to unbundled switching encompass mass market circuit  
switching and all elements that must be made available when such switching is made available.” Shared transport is  
one of those elements.

23 <sup>2</sup> In Paragraph 22 of the FCC Order, the FCC restricts opt-ins of “frozen” unbundling obligations. However, the  
24 FCC’s restriction on opt-ins of frozen unbundling obligations does not alter the fact that the FCC has “frozen”  
Section 251 obligations and that the FCC has provided that certain elements, as outlined in paragraph 16, are  
currently Section 251 obligations and must be filed for state approval.

25 <sup>3</sup> Memorandum Opinion and Order, *In the Matter of Qwest Communications International, Inc. Petition for*  
26 *Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual*  
*Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, 17 Fcc Rcd 19337 (Oct. 4, 2002).

1 most current iteration of Section 251(c) obligations for unbundled access to switching, enterprise  
2 market loops, and dedicated transport.

3 As a result of the recent FCC Order, Qwest's Motion to Dismiss should be denied.  
4 Furthermore, Qwest should be required to file portions of its Qwest Platform Plus agreement  
5 with the Commission for approval.

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7 DATED this \_\_\_\_\_ day of September 2004.

8 Respectfully submitted,

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