Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Corporation	)	Transmittal No. 186
Tariff F.C.C. No. 1	)	

REPLY OF QWEST CORPORATION

Qwest Corporation ("QC"), pursuant to Section 1.773(b)(iii) of the Federal Communications Commission's ("Commission") rules, hereby files this Reply to a Petition to Reject, or to Suspend and Investigate, filed by EarthLink, Inc. ("EarthLink") on February 20, 2004.

EarthLink objects to QC's plan to offer a new retail Digital Subscriber Line ("DSL") service called "Stand Alone Qwest DSL Service." Stand Alone DSL Service is offered to customers who do not subscribe to QC's local exchange service. The service will be provided via loops that are not otherwise engaged in providing local exchange service. The customer could remain the local exchange customer of its competitive local exchange provider, and QC would provide only DSL service. The customer's DSL service would be directed to whatever Internet Service Provider ("ISP") the customer selected. The service is pro-competitive in that it gives customers the opportunity to purchase DSL service from QC while at the same time purchasing local exchange service from another provider.

The predicate of EarthLink's objection is that the Stand Alone retail service is not also available to customers of the QC Volume Discount Plan. ISPs purchasing under that plan can obtain end-to-end connectivity between an end-user premise and the ISP point-of-presence ("POP"). However, the Volume Discount plan is associated with DSL lines where the end-user customer is a local exchange customer of QC. EarthLink claims that, by not including this particular retail product in the QC Volume Discount Plan, QC has "flatly prohibit[ed] a class of users from purchasing the service[.]"[1]

There are several fatal defects in EarthLink's position.

EarthLink apparently seeks the tariffed right to market, under QC's tariffs, DSL service to end-user customers who do not receive local exchange services from QC. While EarthLink clearly has the right to engage in such marketing activities, EarthLink cannot require that QC's tariffs be configured so as to give EarthLink a right under that tariff to engage in marketing activities to non-QC customers.

Moreover, QC's tariff has not "flatly prohibited" any group of users from purchasing DSL service. EarthLink has no federal right to order a link between an end-user customer (not EarthLink) and a QC wire center. Even if it were to be determined that EarthLink's objection was more than a misclaimed right to market under a tariff that could not possibly confer such a right, EarthLink's objection misapprehends both the nature of the QC DSL service and the Commission's tariff rules. QC has no obligation to sell any end-user product at a wholesale discount to non-carriers,[2] and generally does not do so. For market reasons, QC has determined to sell specified DSL products to ISPs at a volume discount.[3] EarthLink's claim that QC has an obligation to include Stand Alone DSL Service in its volume discount program is based on the false premise that QC has an obligation to make all of its end-user services available to non-carriers at a volume discount. This claim makes no more sense than would a more general claim

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[1] EarthLink Petition at 2.

[2] Obviously carriers can purchase QC's retail Stand Alone DSL Service under Section 51.601 *et seq.* of the Commission's rules and Section 251(c)(4) of the Communications Act.

[3] EarthLink generally purchases Host DSL Service from QIA on a resale (enhanced service) basis and volume DSL from QC.

that, once QC had determined to sell one product at a discount, it thereby assumed the obligation to sell all of its other products and services at the same pricing structure as the discounted product. Legally, EarthLink's claim is no more credible than if it were to contend that it had a right to purchase residential exchange service to the premise of a particular QC residential customer in its own name.

A brief review of the Stand Alone DSL Service documents why the QC offering configuration is reasonable and logical. ISPs purchase what is called DSL Host Service.[4] Pursuant to QC's DSL Volume Discount Plan, a purchaser of DSL Host Service may purchase a completed DSL service, including connectivity between the DSLAM and the end-user customer.[5] This Volume Plan is available only when the end-user customer is a local exchange customer of QC (which is the gist of EarthLink's complaint). As noted above, QC is under no obligation, legal or otherwise, to offer Stand Alone DSL Service at a volume discount to non-carriers.

Moreover, EarthLink and other ISPs are not without the ability to market their own services to customers who do not subscribe to QC's local exchange service. Obviously they can market through the competitive local exchange carrier actually providing service to the customer, or directly to the customer.[6] In such case QC is not involved in the transaction at all, and the customer is able to evaluate EarthLink's proposed service on its individual merits. What EarthLink cannot do is use the federal tariff process as a vehicle to permit it to market QC services to entities who are not QC customers.

[4] Tariff FCC No. 1, Section 8.4.3. As noted, this is generally purchased on a resale basis from QIA.

[5] *Id.*, Section 8.4.4.A.2.

[6] EarthLink could either convince the local exchange provider to share the unbundled loop or could inquire on behalf of the end-user customer as to the potential status of unused qualified loops and the end user could purchase the Stand-Alone DSL Service.

As sort of an afterthought, EarthLink contends that, if QC offers a special promotion on one type of DSL service, it must offer the same promotion on all DSL-related services.[7] EarthLink's argument here seems to be that services marketed to end-user subscribers and services marketed to ISPs are "like" services and that any promotional plan available to an end user must automatically be made available to ISPs. This is clearly an erroneous interpretation of the "likeness" test under Section 202(a) of the Act, which clearly recognizes that customer perception is a vital element under this statutory section.[8] Moreover, EarthLink fails to mention the fact that ISPs purchasing under Volume Plans already receive substantial discounts that are not available to end users directly purchasing DSL service. The price comparison that EarthLink purports to claim proves that QC is unlawfully discriminating by not including the already deeply discounted volume discount services in an end-user promotion is simply not accurate.

The EarthLink Petition must be denied in all respects.

Respectfully submitted,

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QWEST CORPORATION

Its Attorneys

February 24, 2004

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[7] Petition at 3.

[8] *Ad Hoc Telecommunications Users v. FCC*, 680 F.2d 790, 795-96 (D.C. Cir. 1982).

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that I have caused the foregoing **REPLY OF QWEST CORPORATION** to be filed with the FCC via its Electronic Tariff Filing System, and served upon the parties on the attached service list as indicated, via email or facsimile and First Class United States mail, postage prepaid.

/s/ Ross Dino
Ross Dino

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