

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's own motion into the operations, practices, and conduct of Qwest Communications Corporation (Qwest), U-5335-C and its wholly owned subsidiary, LCI International Telecommunications Corporation, doing business as Qwest Communications Services (LCIT) , U-5270-C to determine whether Qwest and LCIT have violated the laws, rules and regulations governing the manner in which California consumers are switched from one long distance carrier to another and billed for long distance telephone services.

Investigation 00-11-052  
(Filed November 21, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REMINING PARTIES THAT EX PARTE COMMUNICATIONS  
ARE PROHIBITED, THAT SUCH COMMUNICATIONS MAY BE  
GROUNDS FOR SANCTIONS, AND PROVIDING FOR COMMENT  
ON PAST EX PARTE COMMUNICATIONS**

This ruling (1) reminds parties that ex parte communications are prohibited in this proceeding; (2) defines an ex parte communication; (3) provides for comment on Greenlining Institute's (Greenlining) ex parte communications; and (4) advises parties that such ex parte communications may be grounds for sanctions.

**Ex Parte Communications Are Prohibited By Statute**

The Order Instituting Investigation categorized this proceeding as adjudicatory and no party filed a timely appeal. Pursuant to Pub. Util. Code § 1701.2 (b), in any adjudicatory proceeding, ex parte communications are

prohibited. (See also Rule 7(b) of the Commission's Rules of Practice and Procedure (Rules).)

### **What is an Ex Parte Communication?**

Pub. Util. Code § 1701.1(c)(4) defines an "ex parte communication" for proceedings filed after January 1, 1998 as any oral or written communication that (1) concerns any substantive issue in a formal proceeding; (2) takes place between an interested person and a decisionmaker, and (3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding. (See Rule 5 (e).)

Letters concerning a substantive issue in this investigation sent to a decisionmaker are ex parte communications whether or not they are copied to the other parties, because sending a letter does not occur in a public setting or on the record of the proceeding (and other parties do not have the right to cross examine or otherwise respond to such communication.)

### **The Communications at Issue**

On May 1, 2002, Greenlining sent by electronic mail and facsimile to all Commissioners and parties to this proceeding the letter attached as Appendix A to this ruling. This letter concerns a substantive issue in this proceeding -- the need for the Commission to grant Greenlining's request for hearings on a bond or other financial security to ensure Qwest's payment of the fine set forth in the Presiding Officer's decision. The legal and factual basis for such a hearing are the subject of the Greenlining and Latino Issues Forum's Emergency Motion for a Bond Hearing and is contested by Qwest. Greenlining's May 1 letter is not a procedural inquiry, but rather constitutes advocacy that a bond hearing occur.

On May 1, 2002, Greenlining sent by facsimile a notice of ex parte communication regarding an oral communication Mr. Gnaizda had with

Commissioner Peevey regarding Greenlining's May 1 letter. (This notice is attached hereto as Appendix B.) In its Notice, Greenlining states that both the letter and the oral conversation with Commissioner Peevey are ex parte communications.

### **Comments**

In order that other parties have the opportunity to respond to Greenlining's communications, parties may file comments on the attached letter and notice of ex parte communication no later than May 17, 2002.

### **Violation of Our Ex Parte Rules**

In a March 25, 2002 Assigned Commissioner Ruling in this investigation, Commissioner Wood reminded parties that an absolute ban on ex parte communications applies in this proceeding until it is finally resolved. This ruling echoes that admonishment, and puts all parties on notice that such communications may be grounds for sanctions.

#### **IT IS RULED** that:

1. Ex parte communications are prohibited in this proceeding until it is finally resolved.
2. Parties may file comments on the attached letter and notice of ex parte communication no later than May 17, 2002.
3. Any prohibited ex parte communications may be grounds for sanctions.

Dated May 3, 2002, at San Francisco, California.

/s/ JANET A. ECONOME

Janet A. Econome  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Reminding Parties That Ex Parte Communications are Prohibited, That Such Communications May be Grounds for Sanctions, and Providing for Comment on Past Ex Parte Communications on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated May 3, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

I.00-11-052 JJ/sid

No electronic copies of the Appendixes were available.