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IDAHO PUBLIC
UTILITIES COMMISSION

21 August 2006

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: Case No. QWE-t-06-17

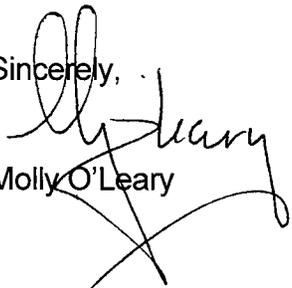
Dear Ms. Jewell:

Enclosed please find an original and seven (7) copies of AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.'S **COMPLAINT** against QWEST CORPORATION.

In addition, please find an original and seven (7) copies of the enclosed **MOTION FOR LIMITED ADMISSION** of Daniel T. Foley, General Attorney & Assistant General Counsel for AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. ("AT&T"); Dennis G. Friedman, of MAYER, BROWN, ROWE & MAW LLP; and Theodore A. Livingston, of MAYER, BROWN, ROWE & MAW LLP, attorneys for AT&T.

I have also enclosed an extra copy of each of the foregoing pleadings to be service-dated and returned to us for our files. Thank you.

Sincerely,


Molly O'Leary

encl.

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Attorneys for Complainant AT&T Communications of the Mountain States, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

AT&T COMMUNICATIONS OF THE MOUNTAIN)
STATES, INC.,)
Complainant)
vs.)
QWEST CORPORATION,)
Respondent.)

CASE NO. QWEST-06-17
COMPLAINT

COMPLAINT

Complainant AT&T Communications of the Mountain States, Inc. (“AT&T”), by its undersigned attorneys, complains against Respondent Qwest Corporation (“Qwest”) as follows:

INTRODUCTION

1. Pursuant to the federal Telecommunications Act of 1996 (“1996 Act”), incumbent telecommunications carriers such as Qwest are required to enter into interconnection agreements with other telecommunications carriers that request access to the incumbent carrier’s network, facilities and services. 47 U.S.C. §§ 251-52. All interconnection agreements must be filed with the appropriate State public utilities commission – here, the Idaho Public Utilities Commission (“PUC”) – for approval. 47 U.S.C. § 252(a), (e). Once an interconnection agreement is approved, the incumbent carrier must make available any interconnection, service, or network element provided under the agreement to any other requesting carrier at the same rates and on the same terms and conditions as those provided in the approved interconnection agreement. 47 U.S.C. § 252(i). To effectuate this requirement, the state commission must keep approved agreements “available for public inspection.” 47 U.S.C. § 252(h).

2. Idaho law also prohibits telecommunications carriers such as Qwest from engaging in rate discrimination. § 62-609(2), Idaho Code.

3. Notwithstanding these legal requirements and prohibitions, Qwest entered into secret interconnection agreements with two telecommunications providers in Idaho. The secret agreements permitted those providers to purchase certain products and services at discounts of up to ten percent

off the rates that other carriers, including AT&T, were paying Qwest for the same services. Qwest did not file these interconnection agreements with the PUC as required by law, and, because they were not filed and remained undisclosed, AT&T did not know about them and therefore could not demand the same discounted rates in a timely manner, as it was entitled to do.

4. In addition to violating federal and state law, Qwest's intentional concealment of the secret agreements also constituted a breach of its interconnection agreement with AT&T. This contract provided, among other things, that Qwest would "act in good faith and consistently with the intent of the [1996] Act" and that Qwest would make products and services available to AT&T on the same rates, and on the same terms and conditions, as Qwest provided to other carriers. Qwest breached its contract with AT&T by failing to act in good faith, by failing to act consistently with the intent of the 1996 Act, by hiding the secret agreements from AT&T, by intentionally failing to comply with the filing requirements of federal and state law, by intentionally preventing AT&T from exercising its rights to avail itself of the discounted rates in the secret agreements, and by failing to fulfill its implied covenant of good faith and fair dealing under Idaho law.

5. As a consequence of Qwest's willful and intentional violations of law, AT&T has suffered damages consisting of, at a minimum, the difference between what it paid Qwest and the amount it would have paid if Qwest had charged it the lower rates it should have charged it. Those damages exceed \$650,000. Complainant brings this action for enforcement of the terms of the McLeod and Eschelon agreements against Qwest, breach of its contractual obligations, and violation of state anti-discrimination laws.

THE PARTIES

6. AT&T is a Colorado corporation with its principal place of business in New Jersey. AT&T provides telephone exchange service, exchange access and other telecommunications and

information services within the State of Idaho. AT&T is a local exchange carrier within the meaning of section 153(26) of the 1996 Act (47 U.S.C. § 153(26)).

7. Qwest is a Colorado corporation with its principal place of business in Colorado. Qwest provides telephone exchange service, exchange access and other telecommunications and information services within the State of Idaho. Qwest is an “incumbent local exchange carrier” (“incumbent LEC” or “ILEC”), as that term is defined in section 251(h) of the 1996 Act, in its authorized service areas in Idaho (47 U.S.C. § 251(h)).

JURISDICTION AND VENUE

8. AT&T brings this Complaint pursuant to Sections 62-609(3), 62-605(b) and 62-615(1), Idaho Code.

GENERAL ALLEGATIONS

A. The Telecommunications Act of 1996

9. Sections 251 and 252 of the Act establish the requirements and process by which competing local exchange carriers (“competing LECs” or “CLECs”) (AT&T in this case) may gain access to the networks, facilities and services of incumbent LECs (Qwest in this case) in order to provide competitive telephone exchange service and exchange access.

10. Section 251 requires an incumbent LEC to, among other things: (1) allow competing carriers to “interconnect” with the incumbent LEC’s network for the “transmission and routing of telephone exchange service and exchange access,” 47 U.S.C. § 251(c)(2); (2) provide competitors with access to elements of the incumbent LEC’s network on an unbundled basis to enable them to provide competing telecommunications services, 47 U.S.C. § 251(c)(3); and (3) offer to competitors at wholesale rates, for resale, the incumbent LEC’s retail services, 47 U.S.C. § 251(c)(4).

11. Under the 1996 Act, the rates, terms and conditions pursuant to which an incumbent LEC provides interconnection, network elements and services to a competing LEC are set forth in an “interconnection agreement” between those parties. The incumbent LEC and the competing LEC may arrive at an interconnection agreement either through negotiation alone (47 U.S.C. § 252(a)) or, if they are unable to reach complete agreement through negotiation, through State utility commission arbitration of the unresolved issues (47 U.S.C. § 252(b)).

12. Any interconnection agreement, whether negotiated or arbitrated, must be filed with the State commission for approval under section 252(e). As the Federal Communications Commission (“FCC”) has observed, this filing requirement “best promotes Congress’s stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements . . . to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.” *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15583, ¶ 167 (1996) (emphasis in original) (subsequent history omitted).

13. After an interconnection agreement is approved by the State commission, other carriers may adopt the rates, terms and conditions in the agreement pursuant to section 252(i) of the 1996 Act. As the FCC has explained, one of the “key purposes of the section 252(a) filing requirement is that carriers will know which interconnection agreements (and terms) are available under section 252(i).” *Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 5169 (2004).

B. Qwest’s Secret Agreements with Eschelon and McLeodUSA

14. Beginning in or about February 2000, Qwest entered into secret interconnection agreements with Eschelon Telecom (“Eschelon”). Those agreements (the “Eschelon Agreements”)

established rates, terms, and conditions, for telecommunications service and facilities that Qwest provided, or agreed to provide, to Eschelon, including rates, terms, and conditions that were not contained in agreements with other similarly situated companies, including AT&T. Qwest did not file these agreements with the PUC as required by law. The Eschelon Agreements were not made publicly available in a timely manner, and Qwest did not in a timely manner either provide AT&T with a copy of these agreements or otherwise notify AT&T of their existence or content.

15. Beginning in or about April 2000, Qwest entered into secret interconnection agreements with McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”). Those agreements (the “McLeodUSA Agreements”) established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to McLeodUSA, including rates, terms, and conditions that were not contained in agreements with other similarly situated companies, including AT&T. Qwest did not file these agreements with the PUC as required by law. The McLeodUSA agreements were not made publicly available in a timely manner, and Qwest did not in a timely manner either provide AT&T with a copy of these agreements or otherwise notify AT&T of their existence or content.

C. Terms of AT&T Interconnection Agreement

16. During the period while Qwest’s secret agreements with Eschelon and McLeodUSA were in place, Qwest was also a party to interconnection agreements with AT&T. The interconnection agreement between Qwest and AT&T in effect in 2001 and 2002 in Idaho (“AT&T Agreement”) required Qwest to abide by the terms of the 1996 Act. In particular, the parties agreed to “act in good faith and consistently with the intent of the Act.” Cmplt. Ex. 1, Scope of Agreement, Section B. The AT&T Agreement also required Qwest to make available to AT&T the rates, terms

and conditions of any other interconnection agreements to which Qwest is a party. See Cmplt., Ex. 1, Section 2.1.

D. Complainants Have Been Damaged By Qwest's Unlawful Behavior.

17. If AT&T had known about Qwest's secret agreements with Eschelon and McLeodUSA in a timely manner, AT&T would have availed itself of the discounts in the Eschelon and McLeodUSA Agreements.

18. The amount that AT&T paid Qwest for services during the time period in which the Eschelon and McLeodUSA Agreements were in effect were approximately ten percent higher than the amounts that Eschelon and McLeodUSA paid Qwest for the same or comparable services pursuant to the secret agreements.

COUNT I

Breach of Contract

19. The allegations of paragraphs 1 through 18 are repeated and realleged as paragraph 19 of Count I.

20. Implied covenants of good faith and fair dealing were part of Qwest's obligations under the AT&T Agreement. Those covenants included an obligation by Qwest to comply with Section 62-609, Idaho Code, which prohibits telecommunications companies such as Qwest from granting preferences to other telephone corporations with respect to its prices or charges; from subjecting any telephone corporation to any prejudice or competitive disadvantage with respect to its prices or charges for providing access to its local exchange network; and from establishing or maintaining any unreasonable difference as to its prices or charges for access to its local exchange network.

21. Qwest's conduct as alleged above violated Section 62-609, Idaho Code.

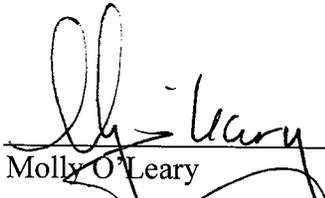
22. Qwest's conduct as alleged above breached Qwest's obligations and covenants under the AT&T Agreement.

23.

WHEREFORE, AT&T respectfully requests this Commission to (1) find that Qwest by its actions described herein breached the AT&T Agreement; and (2) enforce the terms of the AT&T Agreement with Qwest by providing it with same benefits that Qwest provided to Eschelon & McLeod in their agreements and thereby order Qwest to reimburse AT&T the aggregate amount of the price differential between what it paid Qwest and what it should have paid Qwest had it been permitted to opt into the Eschelon and McLeodUSA Agreements, plus interest, costs, and such other and further relief as this Commission deems just.

DATED this 27th day of August, 2006.

RICHARDSON & O'LEARY, P.L.L.C.

By  _____
Molly O'Leary

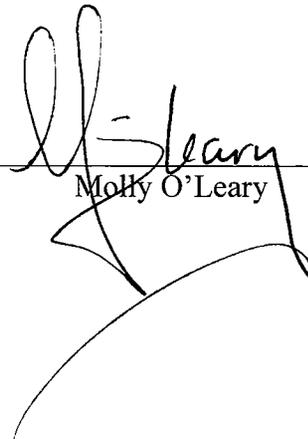
Attorneys for AT&T COMMUNICATIONS OF
THE MOUNTAIN STATES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2006 a true and correct copy of the within and foregoing COMPLAINT was filed with the Idaho Public Utilities Commission as indicated below:

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

- Hand Delivery
- U.S. Mail, postage pre-paid
- Facsimile
- Electronic Mail


Molly O'Leary

QWE-T-06-17

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IDAHO PUBLIC
UTILITIES COMMISSION

COMPLAINANT'S EXHIBIT 1

AT&T-Qwest Interconnection Agreement

**AGREEMENT
FOR LOCAL WIRELINE NETWORK INTERCONNECTION
AND
SERVICE RESALE
Between
AT&T Corp.
and
U S WEST Communications, Inc.
in the State of Idaho**

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This Interconnection Agreement (this "Agreement"), effective _____, 199_ (the "Effective Date"), is entered into by and between AT&T Communications of the Mountain States, Inc., a Colorado Corporation, and U S WEST Communications, Inc., a Colorado corporation, to establish the rates, terms and conditions for local interconnection, local resale, and the purchase of unbundled network elements (individually referred to as the "service" or collectively as the "services").

RECITALS

WHEREAS, pursuant to this Agreement, AT&T and U S WEST will extend certain arrangements to one another within each LATA in which they both operate within Idaho. This Agreement is a combination of agreed terms and terms imposed by arbitration under Section 252 of the Communications Act of 1934, as modified by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission, and the orders, rules and regulations of the Idaho Public Utilities Commission; and as such does not necessarily represent the position of either Party on any given issue; and

WHEREAS, the Parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls, so that subscribers of each can seamlessly receive calls that originate on the other's network and place calls that terminate on the other's network, and for AT&T's use in the provision of exchange access ("Local Interconnection"); and

WHEREAS, AT&T wishes to purchase Telecommunications Services for resale to others, and U S WEST is willing to provide such services; and

WHEREAS, AT&T wishes to purchase on an unbundled basis Network Elements, Ancillary Services and Functions and additional features separately or in any **Combination**¹, and to use such services for itself or for the provision of its Telecommunications Services to others, and U S WEST is willing to provide such services;

Now, therefore, in consideration of the terms and conditions contained herein, AT&T and U S WEST hereby mutually agree as follows:

SCOPE OF AGREEMENT

A. This Agreement specifies the rights and obligations of each Party with respect to the purchase and sale of Local Interconnection, Local Resale and Network Elements in the LATAs in Idaho where U S WEST operates.

B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

C. U S WEST will provide AT&T with at least the level of service quality or performance of obligations under this Agreement as U S WEST provides itself or any other Person with respect to all Telecommunications Services, Local Interconnection, Services for Resale, and Network Elements

¹ Per Order 27236 of the Idaho Public Utilities Commission (Dec. 1, 1997), at p. 8.

⁴ Per Sixth Order, at p. 3.

as applicable and shall provide such level of service quality or performance of service obligations in accordance with the specific requirements agreed to in Attachment 5.⁴

D. U S WEST shall provide to AT&T Services for Resale that are equal in quality, subject to the same conditions (including the conditions in U S WEST's effective tariffs which are not otherwise inconsistent with the terms and conditions contained herein), within the same provisioning time intervals that U S WEST provides these services to itself, its Affiliates and others, including end users, and in accordance with any applicable Commission service quality standards, including standards the Commission may impose pursuant to Section 252 (e)(3) of the Act.

E. Each Network Element provided by U S WEST to AT&T shall be at least equal in the quality of design, performance, features, functions, capabilities and other characteristics, including, but not limited to, levels and types of redundant equipment and facilities for power, diversity and security, that U S WEST provides to itself, U S WEST's own subscribers, to a U S WEST Affiliate or to any other entity.⁵

F. The Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis.

G. If a Party makes a change in its network which it believes will materially affect the interoperability of its network with that of the other Party, the Party making the change shall provide advance notice of such change to the other Party in accordance with applicable FCC or Commission regulations.

H. In accordance with Section 251(c)(5) of the Act and the rules and regulations established by the FCC and the Commission, the Parties shall provide reasonable notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or network, as well as of any other changes that would affect the interoperability of those facilities and networks.

I. Except as otherwise provided for in Section 8 of Attachment 2, U S WEST shall not discontinue or refuse to provide any service required hereunder without AT&T's prior written agreement in accordance with Section 17 of Part A of this Agreement, nor shall U S WEST reconfigure, reengineer or otherwise redeploy its network in a manner which would materially impair AT&T's ability to offer Telecommunications Services in the manner contemplated by this Agreement, the Act or the FCC's rules and regulations. U S WEST agrees that all obligations undertaken pursuant to this Agreement, including, without limitation, performance standards, intervals, and technical requirements are material obligations hereof and that time is of the essence.

DEFINITIONS

Certain terms used in this Agreement shall have the meanings set forth herein or as otherwise elsewhere defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act and the FCC's rules and regulations.

"911 Service" means a universal telephone number which gives the public direct access to the Public Safety Answering Point (PSAP). Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

"911 Site Administrator" is a person assigned by AT&T to establish and maintain 911 service location information for its subscribers.

⁵ Per Sixth Order, at p. 3.

TERMS AND CONDITIONS

1. General Provisions

- 1.1 *Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T's network and to terminate the traffic it receives in that standard format or the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.*
- 1.2 *Neither Party shall impair the quality of service to other carriers or to either Party's Customers, and each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice of such violation, at the earliest practicable time.*
- 1.3 *Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers.*
- 1.3.1 *The Parties recognize that equipment vendors may manufacture telecommunications equipment that does not fully incorporate and may deviate from industry standards referenced in this Agreement. Due to the manner in which individual equipment manufacturers have chosen to implement industry standards into the design of their products, along with differing vintages of individual facility components and the presence of embedded technologies pre-dating current technical standards, some of the individual facility components deployed within U S WEST's network, including, without limitation, Network Elements and associated business processes and the standards associated with the equipment providing such Network Elements (collectively, "Network Components"), may not adhere to all the specifications set forth and described in the Bellcore, ANSI, ITU and other technical and performance standards outlined in this Agreement. Within forty-five (45) days after the Effective Date of this Agreement, the Parties will develop a process by which U S WEST will inform AT&T of deviations from standards referenced in this Agreement. In addition, the Parties agree that those deviations from such standards documented by U S WEST to AT&T shall, to the extent permitted by FCC and Commission rules and regulations, supersede sections of this Agreement referencing technical standards otherwise applicable for the affected Network Elements.*
- 1.3.1.1 *U S WEST agrees that in no event shall it intentionally allow any Network Component provided by U S WEST to AT&T under this Agreement to perform below the standards or deviations therefrom reflected in Section 1.3.1. U S WEST shall minimize any degradation to its equipment relative to currently applicable service, where reasonable in view of industry adopted performance standards and technological developments. Written notice (the "Change Notice") of any planned changes in standards for any Network Component which could impact that Network Component will be provided at least ninety (90) days (or at the make/buy point) prior to the planned implementation. If AT&T notifies U S WEST of how the proposed change may adversely impact AT&T or its Customers within fourteen (14) calendar days after receipt of U S WEST's Change Notice, U S WEST and AT&T will schedule joint discussions to address and attempt to resolve the matter, including without limitation consideration of proposed alternatives. In addition, if U S WEST learns that any Network*

Component purchased by AT&T under this Agreement has been permitted (even if not intentionally) to fall materially below the level or specification in effect as of the Effective Date, U S WEST shall inform AT&T immediately.

1.3.1.2 Nothing in this Agreement shall be construed as an agreement by the parties to waive any continuing legal requirement that U S WEST need only provide access to or interconnection with its network as it exists at the time that AT&T may request such access, as opposed to a yet unbuilt, superior one. Modifications to U S WEST's network may be limited to those required to accommodate interconnection or access to unbundled network elements. Nothing in this agreement shall constitute a waiver of any obligation that U S WEST has to meet applicable state or federal standards respecting the nature, extent, or capabilities of its network that serves customers in Idaho.⁹

1.3.2 For purposes of providing interconnection to AT&T, in no event shall U S WEST be required to provide a level of service superior to that which it provides to itself.¹⁰

1.3.3 These preceding conditions shall be applicable for the entire contract and take precedence over any other conflicting section. The absence of specific references to this Section in potentially conflicting sections is not to be construed to mean that this Section does not apply.

1.3.4 The Parties recognize that services and processes to be provided or followed by U S WEST may deviate from those desired by AT&T or otherwise outlined in this Agreement. Due to the manner in which U S WEST has chosen to adopt its own processes or implement industry standards into the design of its services or support functions, some of the services or support functions deployed within U S WEST may not adhere to all the specifications set forth and described in this Agreement. Within forty-five (45) days after a request by either Party, the Parties will develop processes by which U S WEST will inform AT&T of the standards known by U S WEST to differ from standards referenced in this Agreement for services or support functions actually provided to AT&T. In addition, the Parties agree that such documented by U S WEST pursuant to such process shall, to the extent permitted by FCC and Board rules and regulations, supersede sections of this Agreement referencing such standards, services, or functions.¹¹

2. Most Favored Nation Terms and Treatment

2.1 *Until such time as there is a final court determination interpreting Section 252(i) of the Act, U S WEST shall make available to AT&T the terms and conditions of any other agreement for interconnection, unbundled network elements and resale services approved by the Commission under Section 252 of the Act, in that agreements entirety.*

⁹ Per Sixth Order, at p. 4.

¹⁰ Per Fifth Order, at p. 13

¹¹ Per Sixth Order, at p. 5.

After there is a final court determination interpreting Section 252(i) of the Act, the Parties agree to revise this Section 2.1 to reflect such interpretation

3. Payment

- 3.1 *In consideration of the services provided by U S WEST under this Agreement, AT&T shall pay the charges set forth in Attachment 1 to this Agreement. The billing procedures for charges incurred by AT&T hereunder are set forth in Attachment 5 to this Agreement.*
- 3.2 *Amounts payable under this Agreement, unless reasonably disputed, are due and payable within thirty (30) days after the date of U S WEST's invoice or within twenty (20) days of receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day.*
- 3.3 *A late payment charge of 1.5% applies to all billed balances, not reasonably disputed, which are not paid within the applicable time period set forth in Section 3.2 above. To the extent AT&T pays the billed balance on time, but the amount of the billed balance is reasonably disputed by AT&T, and, it is later determined that a refund is due AT&T, interest shall be payable on the refunded amount in the amount of 1.5% per month. To the extent AT&T pays the billed balance on time, but the amount of the billed balance is reasonably disputed by AT&T, and, it is later determined that no refund is due AT&T, no interest shall be payable on the disputed amount.*
- 3.4 *Late payment charges shall not be used as a "credit" to a deposit, if any, without the express approval of U S WEST.*
- 3.5 *Unless specified otherwise in this Agreement, U S WEST shall bill all amounts due from AT&T for each resold service in accordance with the terms and conditions as specified in the U S WEST tariff.*

4. Taxes

- 4.1 *Any federal, state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party so obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate fully in any such contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party during the applicable reporting period.*

5. Intellectual Property¹²

¹² Per Third Order, at pp. 1-2
USWC/AT&T Interconnection Agreement - Idaho

- 5.1 **Obligations of Party Requesting Access.** As a condition to the access or use of patents, copyright, trade secrets, and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services ("Third Party Intellectual Property"), the Party providing access may require the other, upon written notice from time to time, to obtain a license or permission for such access or use of Third Party Intellectual Property, make all payment, if any, in connection with obtaining such license, and provide evidence of such license.
- 5.2 **Obligations of Party Providing Access.** The Party providing access shall provide a list of all known and necessary Third Party Intellectual Property applicable to the other Party, and take all necessary and appropriate steps to facilitate the negotiation of any mandatory licenses. The Party providing access shall undertake such steps in good faith and shall encourage the Third Party Intellectual Property Owner to grant any mandatory licenses. The treatment of third party licenses shall be in accordance with FCC rules and regulations and/or judicial determinations.
- 5.3 Any intellectual property jointly developed in the course of performing this Agreement shall belong to both Parties who shall have the right to grant non-exclusive licenses to third parties except as otherwise designated in writing by one Party to another. Any intellectual property which originates from or is developed by a Party shall remain the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property presently or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.
- 5.4 If, after the Party providing access under this Agreement has met all of its obligation set forth pursuant to this Section 5, the other Party fails to obtain a license or permission for access or use of Third Party Intellectual Property, the Party providing access shall have no indemnification obligation hereunder for any loss, cost, claim, liability, damage and expense, including reasonable attorney's fees, to third parties, relating to or arising out of the failure of the other Party to obtain such license or permission. The applicability of Section 18 indemnification rights in the case of Third Party Intellectual Property shall be contingent upon compliance with all obligations under this Section 5.

6. Severability

- 6.1 *In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects this*

Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

7. Responsibility for Environmental Contamination

- 7.1 *AT&T shall in no event be liable to U S WEST for any costs whatsoever resulting from the presence or release of any environmental hazard AT&T did not introduce to the affected work location. U S WEST shall, at AT&T's request, indemnify, defend, and hold harmless AT&T, and each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) arising out of or resulting from (a) any environmental hazard U S WEST, its contractors or agents introduce to the work location, or (b) the presence or release of any environmental hazard for which U S WEST is responsible under applicable law.*
- 7.2 *U S WEST shall in no event be liable to AT&T for any costs whatsoever resulting from the presence or release of any environmental hazard U S WEST did not introduce to the affected work location. AT&T shall, at U S WEST's request, indemnify, defend, and hold harmless U S WEST, and each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) arising out of or resulting from (a) any environmental hazard AT&T, its contractors or agents introduce to the work location, or (b) the presence or release of any environmental hazard for which AT&T is responsible under applicable law.*
- 7.3 *In the event any suspect materials within U S WEST-owned, operated or leased facilities are identified to be asbestos-containing, AT&T will ensure that, to the extent any activities which it undertakes in the facility disturb such suspect materials, such AT&T activities will be in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by AT&T or equipment placement activities that result in the generation of asbestos containing material, AT&T shall not have any responsibility for managing, nor be the owner of, not have any liability for, or in connection with, any asbestos containing material. U S WEST agrees to immediately notify AT&T if U S WEST undertakes any asbestos control or asbestos abatement activities that potentially could affect AT&T equipment or operations, including, but not limited to, contamination of equipment.*
- 7.4 *Each Party will be solely responsible, at its own expense, for proper handling, storing, transport and disposal of all (a) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations, or (b) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations.*

8. Branding¹³

- 8.1 **This section describes U S WEST's obligations to offer branded and unbranded services to AT&T.**
- 8.2 **Where technically feasible, U S WEST will offer AT&T branded directory assistance and operator services. Where branding is not technically feasible, U S WEST will be**

¹³ Per First Order at pages 18-19; Third Order, at 2-3.
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required to unbrand directory assistance and operator services. U S WEST shall be able to recover its costs for providing branding and/or unbranding.¹⁴

- 8.3 [Intentionally left blank for numbering consistency]
- 8.4 [Intentionally left blank for numbering consistency]
- 8.5. U S WEST will not be required to rebrand uniforms and vehicles. If a U S WEST service representative is dispatched to an AT&T customer at the request of AT&T, that U S WEST representative shall identify themselves as being present on behalf of AT&T.¹⁵
- 8.6 U S WEST service representatives dispatched on behalf of AT&T shall leave behind AT&T supplied information necessary for the service call. This information must contain a conspicuous disclaimer that U S WEST does not necessarily endorse the content of the information. However, as provided in this Agreement, neither AT&T nor U S WEST personnel shall disparage the other company in any manner during a service call and shall not utilize the service call to market either company's products unless requested by the customer.¹⁶
- 8.7 *U S WEST shall provide, for AT&T's review, the methods and procedures, training and approaches to be used by U S WEST to assure that U S WEST meets AT&T's branding requirements.*
- 8.8 *This Section 8 shall confer on U S WEST no rights to the service marks, trademarks and trade names owned by or used in connection with services by AT&T or its Affiliates, except as expressly permitted by AT&T.*

9. Independent Contractor Status

- 9.1 *Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.*
- 9.2 *Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance or its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes, and other payroll taxes with respect to their respective employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.*
- 9.3 *Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (a) its own acts and performance of all obligations*

¹⁴ Per First Order at 19.

¹⁵ Per First Order at 19.

¹⁶ Per First Order at 19.

imposed by applicable law in connection with its activities, legal status and property, real or personal, and (b) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder. Except for provisions herein expressly authorizing one Party to act for the other, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, neither Party shall undertake to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

10. Referenced Documents

10.1 All references to Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, AT&T practice, U S WEST practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) or such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, AT&T practice, U S WEST practice, or publication of industry standards, unless AT&T elects otherwise.

11. Publicity and Advertising

11.1 Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

12. Executed in Counterparts

12.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same instrument.

13. Headings Not Controlling

13.1 The headings and numbering of Sections, Parts, Appendices and Attachments in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

14. Joint Work Product

14.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

15. Survival

- 15.1 *Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement; any obligation of a Party under the provisions regarding indemnification, confidential information, limitation of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive, or to be performed after, termination of this Agreement, shall survive cancellation or termination thereof.*

16. Effective Date

- 16.1 *This Agreement shall become effective pursuant to Sections 251 and 252 of the Act, on*

17. Amendment of Agreement

- 17.1 *Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. If either Party desires an amendment to this Agreement during the term of this Agreement, it shall provide written notice thereof to the other Party describing the nature of the requested amendment. If the Parties are unable to agree on the terms of the amendment within thirty (30) days after the initial request therefor, the Party requesting the amendment may invoke the dispute resolution process under Section 27 of this Part A of this Agreement to determine the terms of any amendment to this Agreement.*

18. Indemnification

- 18.1 *Notwithstanding any limitations in remedies contained in this Agreement, each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage and expense, including reasonable attorney's fees, to third parties, relating to or arising out of the libel, slander, invasion of privacy, misappropriation of a name or likeness, actual or alleged infringement or other violation or breach of any patent, copyright, trademark, service mark, trade name, trade dress, trade secret or any other intellectual property presently existing or later created, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party.*
- 18.2 *The Indemnified Party will notify the Indemnifying Party promptly in writing of any written claim, lawsuit, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 18 and tender the defense of such claim, lawsuit or demand to the Indemnifying Party. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.*
- 18.3 *The Indemnified Party also will cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party shall have the right to retain its own counsel, including in-house counsel, at its expense, and participate in but not direct the defense; provided,*

however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.

- 18.4 The Indemnifying Party will not be liable under this Section 18 for settlements or compromises by the Indemnified Party of any claim, demand or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to timely undertake the defense. In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

19. Limitation of Liability¹⁷

- 19.1 Except as otherwise provided in the indemnity section, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.

- 19.2 **[Intentionally left blank to preserve numbering consistency]**

- 19.3 *In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party. Nothing contained in this section shall limit either Party's liability to the other for (i) willful or intentional misconduct (including gross negligence); or (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by such Party's negligent act or omission or that of their respective agents, subcontractors or employees. **Notwithstanding the provisions of Section 19.3, to the extent that U S WEST tariffs contain limitations on liability, AT&T shall submit language for inclusion in its Intrastate retail tariffs, that is substantially similar to the limitation of liability language contained in U S WEST's tariffs, and such limitations of liability shall govern for Customer claims. In addition, notwithstanding the provisions of Section 19.3, to the extent that the Commission's quality of service rules provide for remedies to AT&T or its Customers for Customer claims, then those remedies shall govern as to such claims.***

20. Term of Agreement

- 20.1 This Agreement shall be effective for a period of three (3) years, and thereafter shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties shall commence negotiations on a new agreement no later than one (1) year prior to the expiration of the term of this Agreement. Either Party may request resolution of open issues in accordance

¹⁷ Per Third Order, at pp. 3-4.

with the provisions of Section 27 of this Part A of this Agreement, Dispute Resolution, beginning nine (9) months prior to the expiration of this Agreement. Any disputes regarding the terms and conditions of the new interconnection agreement shall be resolved in accordance with said Section 27 and the resulting agreement shall be submitted to the Commission. This Agreement shall remain in effect until a new interconnection agreement approved by the Commission has become effective.

21. Governing Law

21.1 *This Agreement shall be governed by and construed in accordance with the Act and the FCC's rules and regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the State of Idaho, without regard to its conflicts of laws principles, shall govern.*

22. Cancellation Charges

22.1 *Except as provided pursuant to a Bona Fide Request, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.*

23. Regulatory Approvals

23.1 *This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.*

23.2 *U S WEST shall provide AT&T a summary describing the proposed change(s) to each Telecommunications Service which is available pursuant to this Agreement. U S WEST shall also provide AT&T a summary describing the proposed change(s) of each intrastate and interstate tariff which provides for an Interconnection, unbundled Network Element or Ancillary Service that is available pursuant to this Agreement. Such summaries shall be available through an internet Web page to be posted on the same day the proposed change is filed with the Commission or the FCC or at least thirty (30) days in advance of its effective date, whichever is earlier.*

23.3 *In the event any governmental authority or agency orders U S WEST to provide any service covered by this Agreement in accordance with any terms or conditions that individually differ from one or more corresponding terms or conditions of this Agreement, AT&T may elect to amend this Agreement to reflect any such differing terms or conditions contained in such decision or order, with effect from the date AT&T makes such election. The other services covered by this Agreement and not covered by such decision or order shall remain unaffected and shall remain in full force and effect.*

23.4 *The Parties intend that any additional services requested by either Party relating to the subject matter of this Agreement will be incorporated into this Agreement by amendment.*

24. Compliance

24.1 *Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.*

- 24.2 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Law Enforcement Act of 1994 ("CALEA"). Each Party (the "Indemnifying Party") shall indemnify and hold the other Party (the "Indemnified Party") harmless from any and all penalties imposed upon the Indemnified Party for such noncompliance and shall, at the Indemnifying Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.
- 24.3 All terms, conditions and operations under this Agreement shall be performed in accordance with all applicable laws, regulations and judicial or regulatory decisions of all duly constituted governmental authorities with appropriate jurisdiction, and this Agreement shall be implemented consistent with the FCC Interconnection Order and any applicable Commission orders. Each Party shall be responsible for obtaining and keeping in effect all FCC, Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. In the event the Act or FCC or Commission rules and regulations applicable to this Agreement are held invalid, this Agreement shall survive, and the Parties shall promptly renegotiate any provisions of this Agreement which, in the absence of such invalidated Act, rule or regulation, are insufficiently clear to be effectuated, violate, or are either required or not required by the new rule or regulation. During these negotiations, each Party will continue to provide the same services and elements to each other as are provided for under this Agreement. Provided, however, that either Party shall give ten (10) Business Days notice, if it intends to cease any development of any new element or service that is not at that time being provided pursuant to this Agreement. In the event the Parties cannot agree on an amendment within thirty (30) days from the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute, including liability for non-compliance with the new clause or the cost, if any, of performing activities no longer required by the rule or regulation during the renegotiation of the new clause under the applicable procedures set forth in Section 27 herein.

25. Force Majeure

- 25.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers. No delay or other failure to perform shall be excused pursuant to this Section 25 unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations. In the event of a labor dispute or strike, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves. In the event of a labor dispute or strike or work stoppage that continues for a period in excess of forty-eight (48) hours, AT&T may obtain replacement services for those services affected by such labor dispute or strike or work stoppage, in

which event any liability of AT&T for the affected services shall be suspended for the period of the work stoppage or labor dispute or strike. In the event of such performance delay or failure by U S WEST, U S WEST agrees to resume performance in a nondiscriminatory manner and not favor its own provision of Telecommunications Services above that of AT&T.

26. Escalation Procedures

- 26.1 AT&T and U S WEST agree to exchange escalation lists which reflect contact personnel including vice president-level officers. These lists shall include name, department, title, phone number, and fax number for each person. AT&T and U S WEST agree to exchange up-to-date lists as reasonably necessary.

27. Dispute Resolution¹⁸

- 27.1 *If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it may be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof and shall be noticed to the Commission. The arbitrator shall determine which Party or Parties will bear the costs of arbitration, including apportionment, if appropriate. The laws of Idaho shall govern the construction and interpretation of this Agreement, and the arbitration shall occur in Denver, Colorado.*
- 27.2 *In the event AT&T and U S WEST are unable to agree on certain issues during the term of this Agreement, the Parties may identify such issues for arbitration before the Commission. Only those points identified by the Parties for arbitration will be submitted.*
- 27.3 *If a Dispute is submitted to arbitration pursuant to Section 27.1 above, the procedures described in this Section 27.3 shall apply, notwithstanding the then current rules of the AAA. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set forth below. Each party may submit in writing to a Party, and that Party shall so respond, to an agreed amount of the following: interrogatories, demands to produce documents, and requests for admission. Not less than ten (10) days prior to the arbitration hearing, the Parties shall exchange witness and exhibit lists. Deposition discovery shall be controlled by the arbitrator. Additional discovery may be permitted upon mutual agreement of the Parties or the determination of the arbitrator. The arbitration hearing shall be commenced within thirty (30) days after a demand for arbitration by either Party and shall be held in Denver, Colorado. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within seven (7) days after the close of the hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. The*

¹⁸ Per First Order at 48-49
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decision of the arbitrator shall be final and binding upon the Parties and judgment upon the award rendered by the arbitrator may be entered in a court having jurisdiction. The decision shall also be submitted to the Commission.

28. Nondisclosure

- 28.1 All information, including, but not limited to, specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data (a) furnished by one Party to the other Party dealing with Customer specific, facility specific, or usage specific information, other than Customer information communicated for the purpose of publication of directory database inclusion, or (b) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (c) declared orally or in writing to the Recipient at the time of delivery, or by written notice given to the Recipient within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the Discloser. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.
- 28.2 Upon request by the Discloser, the Recipient shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the Recipient's legal counsel may retain one (1) copy for archival purposes.
- 28.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.
- 28.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that:
- 28.4.1 was, at the time of receipt, already known to the Recipient free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the Discloser; or
- 28.4.2 is or becomes publicly known through no wrongful act of the Recipient; or
- 28.4.3 is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the Discloser with respect to such information; or
- 28.4.4 is independently developed by an employee, agent, or contractor of the Recipient which individual is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 28.4.5 is approved for release by written authorization of the Discloser; or
- 28.4.6 is required by law, a court, or governmental agency, provided that the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the

requirement, and provided that the Recipient undertakes all lawful measures to avoid disclosing such information until the Discloser has had reasonable time to obtain a protective order. The Recipient agrees to comply with any protective order that covers the Proprietary Information to be disclosed.

- 28.5 For a period of ten (10) years from receipt of Proprietary Information, the Recipient shall (a) use it only for the purpose of performing under this Agreement, (b) hold it in confidence and disclose it only to employees, authorized contractors and authorized agents who have a need to know it in order to perform under this Agreement, and (c) safeguard it from unauthorized use or disclosure using no less than the degree of care with which the Recipient safeguards its own Proprietary Information. Any authorized contractor or agent to whom Proprietary Information is provided must have executed a written agreement comparable in scope to the terms of this Section. Each Party shall provide advance notice of three (3) Business Days to the other of the intent to provide Proprietary information to a governmental authority and the Parties shall cooperate with each other in attempting to obtain a suitable protective order.
- 28.6 Each Party agrees that the Discloser would be irreparably injured by a breach of this Section 28 by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Section 28. Such remedies shall not be exclusive but shall be in addition to all other remedies available at law or in equity.
- 28.7 CPNI related to either Party's subscribers obtained by virtue of Local Interconnection or any other service provided under this Agreement shall be the Discloser's Proprietary Information and may not be used by the Recipient for any purpose except performance of its obligations under this Agreement, and in connection with such performance, shall be disclosed only to employees, authorized contractors and authorized agents with a need to know, unless the subscriber expressly directs the Discloser to disclose such information to the Recipient pursuant to the requirements of Section 222(c)(2) of the Act. If the Recipient seeks and obtains written approval to use or disclose such CPNI from the Discloser, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the Recipient may use or disclose only such information as the Discloser provides pursuant to such authorization and may not use information that the Recipient has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.
- 28.8 Except as otherwise expressly provided in this Section 28, nothing herein shall be construed as limiting the rights of either Party with respect to its subscriber information under any applicable law, including, without limitation, Section 222 of the Act.
- 28.9 *Effective Date Of This Section.* Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all Proprietary Information furnished by either Party with a claim of confidentiality or proprietary nature at any time.

29. Notices

- 29.1 Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage prepaid, return receipt requested, or delivered by prepaid overnight express mail, and addressed as follows:

To AT&T: AT&T
 Vice President, Local Services
 1875 Lawrence Street
 Denver, Colorado 80202

Copy to: AT&T
 Vice President, Law
 1875 Lawrence Street
 Denver, Colorado 80202

To U S WEST: U S WEST
 Executive Director Interconnect Services
 1801 California, 23rd Floor
 Denver, Colorado 80202

Copy to: U S WEST, Inc.
 Senior Counsel, Law Dept.
 7800 East Orchard Road, Suite 480
 Englewood, Colorado 80111

- 29.2 If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section 29.

30. Assignment

- 30.1 Neither Party may assign, transfer (whether by operation of law or otherwise) or delegate this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that each Party may assign this Agreement to an Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted under the provisions of this Section 30 is void *ab initio*. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement.
- 30.2 If any obligation of U S WEST under this Agreement is performed by a subcontractor or Affiliate, U S WEST shall remain fully responsible for the performance of this Agreement in accordance with its terms, and U S WEST shall be solely responsible for payments due to its subcontractors.
- 30.3 If any obligation of AT&T under this Agreement is performed by a subcontractor or Affiliate, AT&T shall remain fully responsible for the performance of this Agreement in accordance with its terms, and AT&T shall be solely responsible for payments due to its subcontractors.

31. Warranties

- 31.1 U S WEST shall conduct all activities and interfaces which are provided for under this Agreement with AT&T Customers in a carrier-neutral, nondiscriminatory manner.

31.2 U S WEST warrants that it has provided, and during the term of this Agreement it will continue to provide, to AT&T true and complete copies of all material agreements in effect between U S WEST and any third party (including Affiliates) providing any services to AT&T on behalf of or under contract to U S WEST in connection with U S WEST's performance of this Agreement, or from whom U S WEST has obtained licenses or other rights used by U S WEST to perform its obligations under this Agreement, provided, however, that U S WEST may provide such agreements under appropriate protective order.

32. Default

32.1 In the event of a breach of any material provision of this Agreement by either Party, the non-breaching Party shall give the breaching Party and the Commission written notice thereof, and:

32.1.1 if such material breach is for non-payment of amounts due hereunder pursuant to Section 3.2 of Part A of this Agreement, the breaching Party shall cure such breach within thirty (30) days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision.

32.1.2 if such material breach is for any failure to perform in accordance with this Agreement, which, in the sole judgment of the non-breaching Party, adversely affects the non-breaching Party's subscribers, the non-breaching Party shall give notice of the breach and the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within ten (10) calendar days or within a period of time equivalent to the applicable interval required by this Agreement, whichever is shorter. If the breaching Party does not cure such breach within the applicable time period, the non-breaching Party may, at its sole option, terminate this Agreement, or any parts hereof. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Notice under this Subsection 32.1.2 may be given electronically or by facsimile, provided that a hard copy or original of such notice is sent by overnight delivery service.

32.1.3 if such material breach is for any other failure to perform in accordance with this Agreement, the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within forty-five (45) calendar days, and, if it does not, the non-breaching Party may, at its sole option, terminate this Agreement, or any parts hereof. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

32.2 AT&T may terminate this Agreement in whole at any time only for cause upon sixty (60) calendar days' prior written notice. AT&T's sole liability shall be payment of amounts due for services provided or obligations assumed up to the date of termination.

32.3 In the event of any termination under this Section 32, U S WEST and AT&T agree to cooperate to provide for an uninterrupted transition of services to AT&T or another vendor designated by AT&T to the extent that U S WEST has the ability to provide such cooperation.

32.4 Notwithstanding any termination hereof, the Parties shall continue to comply with their obligations under the Act.

33. Remedies

- 33.1 *In the event U S WEST fails to switch a subscriber to AT&T service as provided in this Agreement, U S WEST shall reimburse AT&T in an amount equal to all fees paid by such subscriber to U S WEST for such failed-to-be-transferred services from the time of such failure to switch to the time at which the subscriber switch is accomplished. This remedy shall be in addition to all other remedies available to AT&T under this Agreement or otherwise available.*
- 33.2 *All rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by the other Party of any provision of this Agreement. Use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions of this Agreement.*

34. Waivers

- 34.1 *No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed.*
- 34.2 *No course of dealing or failure of either Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.*
- 34.3 *Waiver by either Party of any default or breach by the other Party shall not be deemed a waiver of any other default or breach.*
- 34.4 *By entering into this Agreement, neither Party waives any right granted to it pursuant to the Act.*

35. No Third Party Beneficiaries

- 35.1 *The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person; provided, however, that this shall not be construed to prevent AT&T from providing its Telecommunications Services to other carriers. This Agreement shall not provide any person not a party hereto with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing without reference hereto.*

36. Physical Security

- 36.1 *U S WEST shall exercise the same degree of care to prevent harm or damage to AT&T or its employees, agents or subscribers, or its property as U S WEST provides itself. AT&T shall exercise the same degree of care to ensure the security of its equipment physically collocated within U S WEST's space as AT&T provides such security to itself.*
- 36.1.1 *U S WEST will restrict access to approved personnel to U S WEST's buildings. AT&T is responsible for the action of its employees and other authorized non-AT&T personnel; U S WEST is responsible for the action of its employees and other authorized non-U S WEST personnel.*

- 36.1.2 *U S WEST will furnish to AT&T the current name(s) and telephone number(s) of those central office supervisor(s) where a physical Collocation arrangement exists. The central office supervisor(s) will be the only U S WEST employee(s) with access to AT&T collocation space.*
- 36.1.3 *U S WEST will comply at all times with U S WEST security and safety procedures at the individual central office locations where AT&T has physical Collocation arrangements. The Parties will cooperate to analyze security procedures of each company to evaluate ways in which security procedures of US WEST may be enhanced.*
- 36.1.4 *U S WEST will allow AT&T to inspect or observe its physical spaces which house or contain AT&T equipment or equipment enclosures at any time upon completion of the physical Collocation quotation. Upon completion of the build out of the physical space, U S WEST will furnish AT&T with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry via direct access to AT&T's physical space.*
- 36.1.5 *U S WEST agrees to logically partition any U S WEST owned access device systems, whether biometric or card reader, or types which are encoded identically or mechanical coded locks on external and or internal doors to spaces which house AT&T equipment.*
- 36.1.6 *U S WEST agrees to limit the keys used in its keying systems for spaces which contain AT&T equipment to the U S WEST supervisor for the specific facility to emergency access only. AT&T shall further have the right to change locks where deemed necessary for the protection and security of its physical spaces and will provide the U S WEST supervisor with the current key.*
- 36.1.8 *U S WEST shall control unauthorized access from passenger and freight elevators, elevator lobbies and spaces which contain or house AT&T equipment or equipment space in the same manner as U S WEST provides such control for itself.*
- 36.1.9 *U S WEST will provide notification to designated AT&T personnel to indicate an actual or attempted security breach of AT&T physical space in the same time frame as U S WEST provides such notification to itself.*

37. Network Security

- 37.1 *U S WEST shall provide an appropriate and sufficient back-up and recovery plan to be used in the event of a system failure or emergency.*
- 37.2 *U S WEST shall install controls to (a) disconnect a user for a pre-determined period of inactivity on authorized ports; (b) protect subscriber proprietary information; and (c) ensure both ongoing operational and update integrity.*
- 37.3 *Each Party shall be responsible for the security arrangements on its side of the network to the Point of Interconnection. The Parties shall jointly cooperate to analyze network security procedures and cooperate to ensure the systems, access and devices are appropriately secured and compatible.*

38. Revenue Protection

- 38.1 *U S WEST shall make available to AT&T all present and future fraud prevention or revenue protection features that U S WEST provides to itself or others. These features include, but are not limited to, operator screening codes, information digits assigned such as information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively, in accordance with the requirements established by the FCC, call blocking of domestic, international blocking for business and residence, 900, NPA-976, and specific line numbers. U S WEST shall additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems ("OSS") which include, but are not limited to, Line Information Data Base Fraud monitoring systems.*
- 38.2 *Uncollectible or unbillable revenues resulting from, but not confined to, provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing such error.*
- 38.3 *Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the Party having administrative control of access to said Network Element or operational support system software.*
- 38.4 *Each Party shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized use of facilities under its control or services it provides, including clip-on fraud.*
- 38.5 *The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.*

39. Law Enforcement Interface

- 39.1 *U S WEST shall provide all necessary assistance to facilitate the execution of wiretap or dialed number recorder orders from law enforcement authorities.*

40. Collocation

40.1 General Description

- 40.1.1 *Collocation is the right of AT&T to obtain dedicated space in U S WEST Local Serving Office (LSO) or other U S WEST locations, including, but not limited to, U S WEST serving wire center and tandem offices, as well as all buildings or similar structures owned or leased by U S WEST, whether or not on public rights-of way, that house U S WEST network facilities, including, but not limited to, vaults containing loop concentrators or similar structures, and the right to place equipment in such spaces for the purposes of interconnection with U S WEST's network or access to U S WEST's unbundled Network Elements. Collocation also includes U S WEST providing resources necessary for the operation and economical use of collocated equipment.*
- 40.1.2 *Collocation is offered for network interconnection between the Parties. AT&T may cross connect to other collocated parties via facilities provided by U S WEST, provided that AT&T's collocated equipment is also used for interconnection with U S WEST or access to U S WEST's unbundled Network Elements.*

- 40.1.3 AT&T is responsible for bringing its own or leased facilities to the U S WEST-designated Point of Interface ("POI"). U S WEST will extend AT&T's facilities from the POI to the cable vault within the wire center. If necessary, U S WEST may bring the facilities into compliance with U S WEST internal fire code standards and extend the facilities to the collocated space.
- 40.1.4 AT&T will be provided two (2) points of entry into the U S WEST wire center only when there are at least two (2) existing entry points for U S WEST cable and when there are vacant entrance ducts in both.
- 40.1.5 AT&T may collocate transmission equipment (including Digital Cross Connect Systems and Remote Switching Units (RSUs) to terminate basic transmission facilities. AT&T must identify what equipment will be installed, to allow for U S WEST to use this information in engineering the power, floor loading, heat release, environmental participant level, and HVAC. At U S WEST's request, AT&T should be required to demonstrate that the switching capabilities of any such units have been disabled.¹⁹
- 40.1.6 [Intentionally left blank for numbering consistency]
- 40.1.7 Expanded Interconnection Channel Termination (EICT). Telecommunications interconnection between AT&T's collocated equipment and U S WEST's network may be accomplished via an Expanded Interconnection Channel Termination (EICT). This element can be at the DS-3, DS-1, DS-0, or any other technically feasible level, subject to network disclosure requirements of the FCC, depending on the U S WEST service to which it is connected. The terms and conditions of the tariff for EICT are incorporated only to the extent that they are agreed to by the Parties. Within ninety (90) days (or other acceptable time agreed to by the Parties) after request, the Parties will meet to review the tariff and seek resolution on disagreed items.
- 40.1.8 Consistent with U S WEST's internal practice, within ten (10) Business Days of AT&T's request for any space, U S WEST shall provide information available to it regarding the environmental conditions of the space provided for placement of equipment and interconnection, including, but not limited to, the existence and condition of asbestos, lead paint, hazardous substance contamination, or radon. Information is considered "available" under this Agreement if it is in U S WEST's possession or files, or the possession of an agent, contractor, employee, lessor, or tenant of U S WEST's that holds such information on U S WEST's behalf.
- 40.1.9 U S WEST shall allow AT&T to perform any environmental site investigations, including, but not limited to, asbestos surveys, which AT&T deems to be necessary in support of its collocation needs. AT&T shall advise U S WEST in writing of its intent to conduct such investigation, and shall receive written approval from U S WEST to proceed. AT&T shall indemnify U S WEST according to Section 18 of Part A of this Agreement for any loss or claim for damage suffered by U S WEST as a result of AT&T's actions during any site inspection.
- 40.1.10 If the space provided for the placement of equipment, interconnection, or provision of service contains environmental contamination or hazardous material, particularly,

¹⁹ First sentence Per First Order at 5.
USWC/AT&T Interconnection Agreement - Idaho

but not limited to, asbestos, lead paint or radon, which makes the placement of such equipment or interconnection hazardous, U S WEST shall offer an alternative space, if available, for AT&T's consideration.

40.2 Virtual Collocation

- 40.2.1 U S WEST shall provide virtual collocation for the purpose of interconnection or access to unbundled Network Elements subject to the rates, terms and conditions of this Agreement.
- 40.2.2 Upon mutual agreement, AT&T will have physical access to the U S WEST wire center building pursuant to a virtual collocation arrangement.
- 40.2.3 AT&T will be responsible for obtaining and providing to U S WEST administrative codes, e.g., common language codes, for all equipment specified by AT&T and installed in wire center buildings.
- 40.2.4 AT&T will be responsible for payment of training of U S WEST employees for the maintenance, operation and installation of AT&T's virtually collocated equipment when that equipment is different than the equipment used by U S WEST. Training conditions are further described in the Virtual Collocation Rate Element section following.
- 40.2.5 AT&T will be responsible for payment of reasonable charges incurred as a result of agreed upon maintenance and/or repair of AT&T's virtually collocated equipment.
- 40.2.6 U S WEST does not guarantee the reliability of AT&T's virtually collocated equipment, but U S WEST is responsible for proper installation, maintenance and repair of such equipment, including the change out of electronic cards provided by AT&T.
- 40.2.7 AT&T is responsible for ensuring the functionality and interoperability of virtually collocated SONET equipment provided by different manufacturers.
- 40.2.8 AT&T, as bailor, will transfer possession of AT&T's virtually collocated equipment to U S WEST, as bailee, for the sole purpose of providing U S WEST with the ability to install, maintain and repair AT&T's virtually collocated equipment. Title to the AT&T virtually collocated equipment shall not pass to U S WEST.
- 40.2.9 AT&T shall ensure that upon receipt by U S WEST of AT&T's virtually collocated equipment, AT&T will make available all access to ongoing technical support to U S WEST, as available under the equipment warranty or other terms and conditions, all at AT&T's expense. AT&T shall advise the manufacturer and seller of the virtually collocated equipment that it will be installed, maintained and repaired by U S WEST.
- 40.2.10 AT&T's virtually collocated equipment must comply with the Bellcore Network Equipment Building System (NEBS) Generic Equipment Requirements TR-NWT-000063, electromagnetic compatibility (EMC) per GR-1089-CORE, Company wire center environmental and transmission standards and any statutory (local, state or federal) and/or regulatory requirements, all of the foregoing which may be in effect at the time of equipment installation or which may subsequently become effective.

51.4.2 For WDM applications, U S WEST shall provide to AT&T an interface to an existing WDM device or allow AT&T to install its own WDM device (where sufficient system loss margins exist or where AT&T provides the necessary loss compensation) to multiplex the traffic at different wavelengths. This applies to both the transmit and receive ends of the Dark Fiber.

51.5 [Intentionally left blank for numbering consistency.]

51.6 Portions of the bandwidth of the fiber may be sectioned and AT&T may share the bandwidth with U S WEST and other CLECs. **U S WEST may not deny access to interconnection or any unbundled network element on the basis of technical feasibility or capacity limitation, where such unfeasibility or capacity may be eliminated by making any existing dark fiber capable of operation.**³³

52. Service Standards

52.1 U S WEST shall provide to AT&T service that is equal to that which U S WEST provided to itself or to its Affiliates. U S WEST and AT&T agree to amend this Section and all relevant portions of this Agreement to incorporate any performance standards and reporting measures to which the Parties may mutually agree. In the event the Parties do not reach agreement as to specific performance standards and reporting measures, U S WEST will provide to AT&T performance standard reports that U S WEST prepares for itself or can reasonably develop. **AT&T may request any additional reports, provided that it pays U S WEST's efficient incremental costs for providing these additional reports**³⁴. Either Party may resolve specific disputes regarding performance standards and reporting measures in accordance with the dispute resolution process contained herein. However, AT&T is not entitled to demand in the name of service parity levels at any predetermined level,³⁵ nor will any performance penalties or credits be included in this Agreement except as the Parties may otherwise agree.³⁶

53. Entire Agreement

53.1 This Agreement shall include the Attachments, Appendices and other documents referenced herein all of which are hereby incorporated by reference, and constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

53.2 If a provision contained in any U S WEST tariff conflicts with any provision of this Agreement, the provision of this Agreement shall control, unless otherwise ordered by the FCC or the Commission.

54. Reservation of Rights

54.1 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Commission. Any or all of the terms of this Agreement may be altered or abrogated by a successful challenge to this Agreement (or the order approving this

³³ Per First Order at 10; Second Order at 7.

³⁴ Per First Order at p. 47.

³⁵ Per First Order at p. 46.

³⁶ Per First Order at p. 48.

Agreement) as permitted by applicable law. By signing this Agreement, neither Party waives its right to pursue such a challenge.

- 54.2 *The Parties enter into this Agreement without prejudice to any position they may have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

AT&T Communications of the Mountain States, Inc.

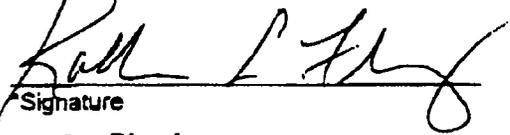
Signature

Name Printed/Typed

Title

Date

U S WEST Communications, Inc.



Signature

Kathy Fleming

Name Printed/Typed

Executive Director - Interconnection

Title

8/12/98

Date

**Signature does not indicate agreement with all aspects of the arbitrator's decision, nor does it waive any of U S WEST's right to seek judicial review of all or part of the agreement, or to reform the agreement as the result of successful judicial review.*