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IDAHO PUBLIC
UTILITIES COMMISSION

9 March 2007

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

Via HAND DELIVERY

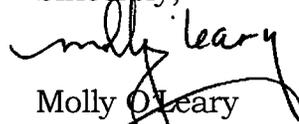
RE: Case No. QWE-T-06-17

Dear Ms. Jewell:

Enclosed please find an original and seven (7) copies of AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.'S RESPONSE TO COMMISSION ORDER 30247 & AT&T'S AMENDED COMPLAINT.

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. QWE-T-06-17
AMENDED COMPLAINT

AMENDED 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. During the period at issue here (October 2000 through June 2002), AT&T and Qwest were parties to an agreement, approved by the Idaho Public Utilities Commission, pursuant to which Qwest provided various products and services to AT&T in Idaho ("AT&T Agreement"). The AT&T Agreement required Qwest to make available to AT&T the rates, terms, and conditions of any other similar agreements to which Qwest was a party in Idaho. See Ex. 1 hereto, Sections 2.1 and 24.1; see also *id.*, Scope of Agreement, Section B.

2. Beginning on or about November 15, 2000, Qwest entered into a secret agreement with Eschelon Telecom Inc. ("Eschelon"). That agreement (the "Eschelon Agreement") 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. These terms included a discount for Eschelon of up to 10% on all products and services it obtained from Qwest, and Qwest provided those discounts to Eschelon while the Eschelon Agreement was in effect. Qwest did not make these discounts available to AT&T.

3. Beginning on or about October 26, 2000, Qwest entered into a secret oral agreement with McLeodUSA Telecommunications Services, Inc. ("McLeod"). That agreement (the "McLeod Agreement") established rates, terms and conditions for telecommunications services and facilities that Qwest provided, or agreed to provide, to McLeod, including rates, terms, and conditions that were not contained in agreements with other similarly situated companies, including AT&T. These

terms included a discount for McLeod of up to 10% on all products and services it obtained from Qwest, and Qwest provided those discounts while the McLeod Agreement was in effect. Qwest did not make these same discounts available to AT&T.

4. To the best of AT&T's information and belief, the Eschelon Agreement was in effect and discounts were provided by Qwest from November 15, 2000 through March 1, 2002, and the McLeod Agreement was in effect and discounts were provided by Qwest from October 26, 2000 through June 30, 2002.

5. In addition, both Eschelon and McLeod received payments from Qwest for terminating the Eschelon Agreement and McLeod Agreement, respectively, earlier than the agreements otherwise would have been terminated.

6. If Qwest had made the terms of the secret agreements with Eschelon and McLeod available to AT&T as required by the AT&T Agreement, AT&T would have availed itself of the benefits of the Eschelon and McLeod Agreements.

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

8. As a consequence of Qwest's breach of the AT&T Agreement, AT&T has suffered damages consisting of, at a minimum, (i) 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 during the period when the Eschelon and McLeod Agreements were in effect, plus (ii) an amount to reflect the additional de facto discount provided to Eschelon and Qwest in exchange for terminating their secret discount agreements earlier than planned. Those damages exceed \$650,000.

THE PARTIES

9. 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.

10. 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.

JURISDICTION AND VENUE

11. AT&T brings this Complaint pursuant to its contract with Qwest and Idaho's common law of contract.

COUNT I

Breach of Contract

12. The allegations of paragraphs 1 through 11 are repeated and realleged as paragraph 12 of Count I.

13. Qwest's conduct as alleged above breached Qwest's obligations under Sections 2.1 and 24.1 of the AT&T Agreement, as well as Section B of the "Scope of Agreement." Section 2.1 of the AT&T Agreement provides that:

Until such time as there is a final court determination interpreting Section 252(i) of the Act, [Qwest] 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 agreement[']s entirety.

As discussed above, Qwest breached Section 2.1 by failing to make available to AT&T the terms and conditions of agreements between Qwest and Eschelon and McLeod regarding interconnection, unbundled network elements, and resale services.

Section 24.1 of the AT&T Agreement provides that:

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

As discussed above, Qwest breached Section 24.1 by failing to comply with laws, rules, and regulations applicable to its performance under its contract with AT&T. Specifically, Qwest failed to provide intrastate access services and other products and services to AT&T in a nondiscriminatory manner as required by Idaho Code § 62-609.

Section B of the “Scope of Agreement” in the AT&T Agreement provides that:

In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act.

As discussed above, Qwest breached this provision by failing to act in good faith, in that it provided secret discounts to other carriers on the same products and services then being purchased by AT&T, without making those same discounts available to AT&T. Qwest also breached its duty of good faith by frustrating the purpose of Section 2.1 of the agreement when it failed to have the Eschelon and McLeod agreements “approved by the Commission under Section 252 of the Act.”

14. Qwest’s conduct also breached the implied covenants of good faith and fair dealing that were part of Qwest’s obligations under the AT&T Agreement. Those covenants included an obligation by Qwest to comply with Section 62-609 of the 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 corporations 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.

15. Qwest's breaches of its contract with AT&T damaged AT&T in an amount equal to at least

(i) the aggregate amount of the price differential between what AT&T paid Qwest and what it would have paid Qwest if it had been permitted to avail itself of the discounts in the Eschelon and McLeod Agreements while they were in effect; specifically, an amount equal to a 10% discount on all products and services that AT&T purchased from Qwest in Idaho between October 26, 2000 (the date of the McLeod Agreement) through June 30, 2002 (the alleged termination date of the McLeod Agreement)¹, plus

(ii) an amount, to be determined at trial, to reflect the additional de facto discount reflected in the payments that Qwest provided to Eschelon and McLeod in exchange for terminating their secret discount agreements earlier than planned.

WHEREFORE, AT&T respectfully requests this Court to enter judgment in its favor and

(i) declare that Qwest violated the AT&T Agreement, and

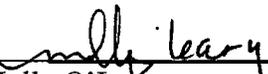
(ii) require Qwest to pay damages to AT&T as described above, plus interest and costs,

and such other and further relief as this Commission deems just.

¹ These dates encompass the effective period of the Eschelon Agreement (November 15, 2000 through March 1, 2002).

Dated this 9th day of March, 2007

AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC.

By  _____
Molly O'Leary
Richardson & O'Leary, PLLC
Attorneys for AT&T COMMUNICATIONS OF
THE MOUNTAIN STATES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of March, 2007 a true and correct copy of the within and foregoing AT&T'S AMENDED COMPLAINT was filed with the Idaho Public Utilities Commission and parties as indicated below:

Ms. Jean Jewell

Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

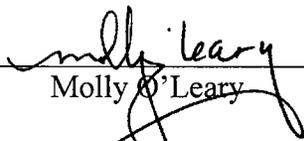
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Molly O'Leary

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

TABLE OF CONTENTS

RECITALS

SCOPE OF AGREEMENT

DEFINITIONS

1. General Provisions
2. Most Favored Nation Terms and Treatment
3. Payment
4. Taxes
5. Intellectual Property
6. Severability
7. Responsibility for Environmental Contamination
8. Branding
9. Independent Contractor Status
10. Referenced Documents
11. Publicity and Advertising
12. Executed in Counterparts
13. Headings Not Controlling
14. Joint Work Product
15. Survival
16. Effective Date
17. Amendment of Agreement
18. Indemnification
19. Limitation of Liability

20. Term of Agreement
21. Governing Law
22. Cancellation Charges
23. Regulatory Approvals
24. Compliance
25. Force Majeure
26. Escalation Procedures
27. Dispute Resolution
28. Nondisclosure
29. Notices
30. Assignment
31. Warranties
32. Default
33. Remedies
34. Waivers
35. No Third Party Beneficiaries
36. Physical Security
37. Network Security
38. Revenue Protection
39. Law Enforcement Interface
40. Collocation
41. Technical References - Collocation
42. Number Portability
43. Dialing Parity
44. Directory Listings
45. Intentionally Left Blank
46. U S WEST Dex Issues
47. Access to Poles, Ducts, Conduits, and Rights of Way
48. Bona Fide Request Process for Further Unbundling
49. Audit Process

- 50. Miscellaneous Services
- 51. Unused Transmission Media
- 52. Service Standards
- 53. Entire Agreement
- 54. Reservation of Rights

SIGNATURE PAGE

ATTACHMENTS

- | | |
|---------------------|--------------------------------------|
| <u>Attachment 1</u> | Rates and Charges |
| <u>Attachment 2</u> | Resale |
| <u>Attachment 3</u> | Unbundled Access/Elements |
| <u>Attachment 4</u> | Interconnection |
| <u>Attachment 5</u> | Business Process Requirements |
| <u>Attachment 6</u> | Electronic Interfaces |
| <u>Attachment 7</u> | Implementation Schedule |

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 Combination¹, 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.

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

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.*