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

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

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CASE NO. QWE-T-06-17

**DIRECT TESTIMONY OF  
ELLYCE BRENNER ON  
BEHALF OF AT&T  
COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.**

August 16, 2007

1 I. INTRODUCTION

2

3 Q. Please state your name for the record.

4 A. My name is Ellyce Brenner.

5 Q. By whom are you employed and what is your current position?

6 A. I am employed by AT&T Operations, Inc. as the Vice President – Strategic  
7 Marketing Enablement.

8 Q. Please briefly describe your educational background.

9 A. I have a Bachelors of Science degree from the University of Illinois, graduating in  
10 1976, and a Masters of Management from the Kellogg School of Business,  
11 Northwestern University, earned in 1981.

12 Q. Please briefly describe your work experience.

13 A. I have held a wide variety of positions over the last 24 years with AT&T  
14 including positions in direct sales, sales support, public policy, product  
15 management and marketing.

16 Q. During the 2000 to 2003 time frame, which is the time pertinent to this  
17 complaint proceeding, what were your job responsibilities at AT&T?

18 A. During that timeframe, I held the position of AT&T Business Local Services Vice  
19 President. My position included responsibility for managing AT&T's Business  
20 Local Services product family inclusive of the establishment and delivery of  
21 financial targets, market planning and execution, establishment of development  
22 priorities, achievement of operational metrics and delivery of customer  
23 satisfaction to company targets and industry benchmarks.

24 Q. What is the purpose of your testimony?

Brenner, Di-1  
AT&T Communications of  
the Mountain States, Inc.

1 A. My testimony is offered to demonstrate that if AT&T Communications of the  
2 Mountain States, Inc. had been provided the opportunity to receive the same  
3 discounts offered to Eschelon and McLeodUSA in their interconnection  
4 agreements with Qwest Corporation (“Qwest”) during the time period from  
5 November 1, 2000, through December 31, 2005, AT&T would have availed itself  
6 of the opportunity. For ease of reference, I will refer to AT&T Communications  
7 of the Mountains States, Inc., and its affiliated competitive local exchange carriers  
8 (“CLECs”) providing service in the Qwest 14-state territory as “AT&T.”

9 **II. THE ESCHELON AND MCLEODUSA SECRET AGREEMENTS**

10 **Q. What documents have you reviewed to prepare for your testimony with**  
11 **regard to Eschelon and McLeodUSA agreements?**

12 A. I have reviewed the following materials:

- 13 • Amendment No. 8 to the Interconnection Agreement Between Eschelon  
14 Telecom of Minnesota, Inc. and Qwest Corporation in Minnesota (dated  
15 November 15, 2000, and December 4, 2000), a/k/a Confidential Purchase  
16 Agreement
- 17 • Confidential Amendment to Confidential/Trade Secret Stipulation (dated  
18 November 15, 2000, executed by Eschelon Telecom, Inc. and Qwest  
19 Corporation)

- 1       • Affidavits of Blake Fisher and Lori Deutmeyer of McLeodUSA filed in the  
2       Minnesota PUC Proceeding (provided with Mr. Deanhardt’s direct  
3       testimony)<sup>1</sup>
- 4       • Deposition of Blake Fisher of McLeodUSA taken in the Minnesota PUC  
5       Proceeding on June 27, 2002 (provided with Mr. Deanhardt’s direct  
6       testimony)
- 7       • An “Outline of Major Terms” dated September 19, 2000 related to what I  
8       discuss below as “McLeodUSA Agreement III” and produced by Blake Fisher  
9       in the Minnesota PUC Proceeding (provided with Mr. Deanhardt’s direct  
10      testimony)
- 11      • Minnesota Administrative Law Judge’s Findings of Fact, Conclusions,  
12      Recommendations and Memorandum dated September 20, 2002, in the  
13      Minnesota PUC Proceeding (“Minn. ALJ’s Report”)
- 14      • Minnesota PUC Order in the Minnesota PUC Proceeding dated November 1,  
15      2002, adopting Minn. ALJ’s Report

16   **Q.    What is your understanding of the Eschelon secret agreement?**

17   A.    In what has been referred to as “Eschelon Agreement IV,” Qwest agreed to give  
18   Eschelon a 10% discount that applied to all Eschelon purchases of Qwest  
19   unbundled network elements or services for a five-year period. While Qwest  
20   claimed the discount was in exchange for “consulting services” to be provided by  
21   Eschelon to Qwest, the Administrative Law Judge in the Minnesota proceeding

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<sup>1</sup> The “Minnesota PUC Proceeding” refers to *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket Nos. 6-2500-14782-2 & P-421/C-020197, Minnesota Public Utilities Commission.

1 specifically found that the consulting agreement was in fact a "sham" designed to  
2 conceal the discount. Qwest also agreed to give Eschelon monthly credits that  
3 lowered the cost to Eschelon for various services it ordered from Qwest.

4 **Q. What is your understanding of the McLeodUSA secret agreement?**

5 The McLeodUSA secret agreement with Qwest was an oral agreement where  
6 Qwest agreed to give McLeodUSA a 6.5% to 10% discount on all purchases from  
7 Qwest as long as McLeodUSA met certain minimum purchase volume  
8 commitments, regardless of the type of products or services purchased or whether  
9 the purchases were made inside or outside Qwest's 14-state territory. This  
10 discount was to remain in place until the end of 2003. When McLeodUSA  
11 executives expressed concern that the oral agreement may not be enforceable,  
12 Qwest refused to memorialize the discount in writing, and instead entered into a  
13 written take-or-pay agreement to purchase products from McLeodUSA as the  
14 mechanism for providing the promised discount to McLeod USA.

15 **Q. Was AT&T offered the same secret agreement or discount arrangement that**  
16 **Qwest gave to Eschelon?**

17 A. No.

18 **Q. Was AT&T offered the same secret agreement or discount arrangement that**  
19 **Qwest offered to McLeodUSA?**

20 A. No.

21 **Q. If Qwest had offered these secret agreements to AT&T, would you have been**  
22 **aware of them?**

1 A. Yes. Part of my job is to evaluate new opportunities available to AT&T to enter  
2 into new markets, expand or contract existing markets, and reduce costs of  
3 providing services. The underlying cost of service is key factor in the economic  
4 evaluation of an opportunity.

5 **Q. If AT&T had been provided the opportunity to enter into a discount**  
6 **agreement with Qwest similar to that entered by Eschelon and McLeodUSA,**  
7 **would it have done so?**

8 A. Yes. In my opinion, AT&T would have elected to enter either the Eschelon or  
9 McLeodUSA agreement in order to receive the same discounts provided to the  
10 two competing carriers if it had been provided the opportunity to do so.

11 **Q, What is the basis for your opinion that AT&T would have opted into either**  
12 **the Eschelon or McLeodUSA discount agreements?**

13 A. First, AT&T would have saved a substantial sum of money if it had been allowed  
14 to enter into either agreement – not explicitly in Idaho, but over the entire Qwest  
15 territory. In his testimony, Greg Nagrosst identifies the actual amounts that would  
16 have been saved based on various time period assumptions.

17 Second, it is my understanding that Qwest may argue that there were  
18 certain conditions attached to the discounts it provided to Eschelon and  
19 McLeodUSA, possible in Amendment 8 to the Qwest-Eschelon interconnection  
20 agreement or through other sources. Various of these alleged conditions would  
21 have no relevance to AT&T, and it is unclear whether any of the conditions were  
22 actually enforced.. Even if they were actually enforced, however, the alleged  
23 conditions stated in the agreements to qualify for the discounts were not so

1 onerous as to deter AT&T from entering the agreements. Some of the purported  
2 conditions, such as the obligation by Eschelon to provide Qwest with “consulting  
3 services,” appear to have been sham agreements used to artificially distinguish the  
4 agreement from interconnection agreements that Qwest entered with the other  
5 CLECs. Also, as I noted, it is not clear from the record developed in Minnesota  
6 proceeding that Qwest even insisted on satisfaction of the conditions before it  
7 provided the discounts to the two CLECs.

8 Third, the revenue threshold provided in the agreements would have been  
9 easily satisfied by AT&T. In the McLeodUSA agreement, McLeodUSA had to  
10 spend \$220 million in 2001 and \$250 million thereafter with Qwest to be entitled  
11 to the maximum 10% discount. As discussed in Mr. Nagrosst’s testimony, AT&T  
12 spent **AT&T CONFIDENTIAL INFORMATION [ ] END OF**  
13 **CONFIDENTIAL INFORMATION** with Qwest between November of 2000  
14 and December of 2005 – this represents an annual monthly spend of over **AT&T**  
15 **CONFIDENTIAL INFORMATION [ ] END OF CONFIDENTIAL**  
16 **INFORMATION** or an annual spend of over **AT&T CONFIDENTIAL**  
17 **INFORMATION [ ]**  
18 **END OF CONFIDENTIAL INFORMATION**. Obviously, the spend threshold  
19 in the McLeod agreement could have been easily met by AT&T. Likewise in the  
20 Eschelon agreement, the spend commitment was even lower, \$150 million over  
21 five years. AT&T spent well in excess of that amount.

22 Fourth, the alleged access line and new market entry thresholds would  
23 have been satisfied by AT&T. As far as entering new markets, in Qwest’s

1 territory during the time period in question (2000 to 2005), AT&T was planning  
2 to provide, starting to provide or was providing local service to every major  
3 market in the Qwest region. Other alleged requirements such as the 50,000 access  
4 lines and AT&T ordering 1,000 business lines from Qwest in 8 of 11 named  
5 markets would not have been obstacles to AT&T entering the agreements.

6 Fifth, even if there were conditions that AT&T arguably may not have  
7 met, and assuming that the conditions were enforced by Qwest and were not just  
8 sham provisions, that does not mean AT&T could not have met such conditions.  
9 If presented the opportunity to achieve a 10% savings on all its purchases from  
10 Qwest for a multi-year period beginning in late 2000, AT&T certainly could have  
11 modified its business plans and resource deployment to achieve such a substantial  
12 savings. The fact that AT&T was unaware of the agreements because Qwest  
13 decided not to honor its contract commitments to AT&T (such as most favored  
14 nations provision) should not be used to deny AT&T of the benefit that it could  
15 have obtained if Qwest had complied with its contractual obligations.

16 **Q. In summary, if presented the opportunity to obtain a 10% discount from**  
17 **Qwest under terms similar to those offered by Qwest in its secret agreements**  
18 **with Eschelon and McLeodUSA in 2000, would AT&T have opted into the**  
19 **agreements?**

20 A. Yes.

21 **III. CONCLUSION**

22 **Q. Does this conclude your direct testimony?**

23 A. Yes.