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August 10, 2007

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702-5983

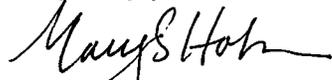
**RE: Docket No. QWE-T-06-17**

Dear Ms. Jewell:

Enclosed for filing with this Commission is the original and seven (7) copies of **QWEST CORPORATION'S MOTION TO STAY PROCEEDINGS** in the above referenced matter.

If you have any questions, please contact me. Thank you for your cooperation in this matter.

Very truly yours,

  
Mary S. Hobson

Enclosures

cc: Service List

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Attorney for Qwest Corporation

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<p><b>AT&amp;T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,</b></p> <p><b>Complainant,</b></p> <p>v.</p> <p><b>QWEST CORPORATION,</b></p> <p><b>Respondent.</b></p>	<p><b>Case No. QWE-T-06-17</b></p> <p><b>QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS</b></p>
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**INTRODUCTION**

Qwest Corporation ("Qwest") files this Motion for a stay of the proceedings before the Idaho Public Utilities Commission (the "Commission"), pending a decision from the United States District Court for the District of Idaho ("federal Court") on Qwest's motion to dismiss the complaint filed by AT&T Communications of the Mountain States, Inc. ("AT&T"). Grant of this stay will preserve the resources of the Commission and the parties while the federal Court considers the dispositive federal question of whether, as Qwest contends, AT&T's complaint is barred by the two-year statute of limitations in Section 415 of the Federal Communications Act.

This process is appropriate because the federal Court is the final arbiter on this

QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS

dispositive question of federal law. While the Commission and the federal Court have concurrent jurisdiction, the Commission's orders on questions of federal law are subject to *de novo* review under the Telecommunications Act of 1996 ("Federal Act"). See 47 U.S.C. 252(e)(6). Thus, staying this case until the federal Court decides Qwest's motion to dismiss will save resources and potentially avoid unnecessary and duplicative discovery and trial in two fora.

In this case, no damage or inequity would result to AT&T or the Commission from granting a stay. AT&T will not be prejudiced by a stay of this proceeding because it – not Qwest – initiated actions contemporaneously in two fora, and all of its rights and claims are at issue in the federal Court. In contrast, allowing this case to proceed would work material unfairness against Qwest, which would unnecessarily be forced to expend substantial resources to defend against a complaint that the federal Court may (and Qwest has elsewhere shown should) dismiss as untimely. Because a stay would further the orderly and efficient cause of justice by simplifying the issues and potentially disposing of the cases in their entirety, Qwest respectfully requests that the Commission stay the current proceedings pending resolution of Qwest's motion to dismiss by the federal Court.

### **BACKGROUND**

AT&T's Complaint relates to events that ended over four years ago. Specifically, AT&T's claim arises from two allegedly "secret" Qwest interconnection agreements – one with Eschelon and another with McLeod. Qwest and the respective parties entered into these interconnection agreements pursuant to Sections 251 and 252 of the Federal Act. The agreements were terminated in 2002. AT&T was an active participant in proceedings before state commissions since 2002. Notwithstanding those opportunities, AT&T sat on its hands and

QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS

did not file a complaint against Qwest before this Commission until August 21, 2006, when it attempted to resurrect the same allegations.

Qwest moved to dismiss AT&T's complaint on September 27, 2006 because 47 U.S.C. § 415 barred its claim. After briefing and oral argument, the Commission issued Order No. 30247 on February 16, 2007, finding that it had authority under the federal Act to interpret and enforce an interconnection agreement. *AT&T Commc'ns of the Mountain States v. Qwest Corp.*, Case No. QWE-T-06-17, Order No. 30247 (Idaho P.U.C. Feb. 16, 2007). The Commission also found "that the Agreement [was to] be construed under state law while recognizing that the parties must also comply with various federal requirements." *Id.* at 4. Recognizing a role for both state and federal law, the Commission left open the question of the applicable limitations period and found "additional briefing is necessary to determine the complaint's gravamen and address the statute of limitations issue." *Id.* at 5.

The Commission subsequently issued Order No. 30297, which directed the parties to confer "for the purpose of developing a schedule to process this case." *AT&T Commc'ns of the Mountain States v. Qwest Corp.*, Case No. QWE-T-06-17, Order No. 30297 (Idaho P.U.C. Apr. 12, 2007). The briefing schedule contemplates further dispositive motions.

In the midst of briefing on Qwest's motion to dismiss, AT&T filed a duplicative complaint in the District Court of the Fourth Judicial District of the State of Idaho (Ada County) on January 31, 2007. AT&T Complaint, attached as Exh. 1. AT&T served the complaint on Qwest on May 30, 2007, and Qwest then removed the action to federal court on June 19, 2007. Qwest then filed a motion to dismiss the action because Section 415 barred AT&T's complaint. Qwest Motion to Dismiss, attached as Exh. 2. AT&T responded to Qwest's motion to dismiss and also filed motions to stay and remand the federal action, which

QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS

Qwest is opposing. AT&T Motion to Stay Proceedings, attached as Exh. 3; AT&T Motion to Remand, attached as Exh. 4. Although AT&T is seeking to stay the federal Court case, Qwest opposes that motion on the basis that the dispositive issue is one of federal law and nothing otherwise supports federal abstention.

As the Commission acknowledged, its jurisdiction to interpret and enforce interconnection agreements arises under the Federal Act. *See* Order No. 30247, at 2-3 (“Federal law indicates that a Commission does have authority to interpret and enforce an interconnection agreement.”). The Federal Act also imposes a unique system of judicial review that directs appeals of Commission orders and decisions involving interconnection agreements to federal court. *See* 47 U.S.C. § 252(e)(6) (providing that “[i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section”). Under this system, the Commission’s determinations of federal law are reviewed by federal courts *de novo* and all other determinations, such as factual findings, are reviewed under a substantial evidence standard. *US WEST Comm’n’s, Inc. v. Jennings*, 304 F.3d 950, 958 (9th Cir. 2002). State courts are expressly excluded from this system. *See* 47 U.S.C. § 252(e)(4) (stating that “[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section”). Not only does the federal Court have concurrent jurisdiction with the Commission in this matter, but the federal Court also has jurisdiction over any direct appeals from this case. *See Verizon Md, Inc. v. Public Serv. Comm’n of Md*, 535 U.S. 635, 643-44 (2002) (finding that the Federal Act expressly precluded state court review in 47 U.S.C. § 252(e)(6) and that federal courts retained

QWEST CORPORATION’S MOTION FOR STAY OF PROCEEDINGS

their general federal jurisdiction under 28 U.S.C. § 1331). Thus, the pending federal case may dispose conclusively the federal question of whether Section 415 applies and entirely resolve both actions.

### STANDARD

Courts and commissions generally have discretion to grant or deny a stay. *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Under Idaho law, “there may be some circumstances which would justify a state court in staying a state court action pending the termination of a similar controversy pending [in] the federal courts.” *Roberts v. Hollandsworth*, 616 P.2d 1058, 1061 (Idaho 1980) (finding that trial court did not err in dismissing state court action where federal action was already pending, which could adequately resolve entire controversy). In deciding whether to stay proceedings, Idaho courts must evaluate (1) “the identity of the real parties in interest and the degree to which the claims or issues are similar,” (2) “whether the court in which the matter already is pending is in a position to determine the whole controversy and to settle all the rights of the parties,” and (3) “the occasionally competing objectives of judicial economy, minimizing costs and delay to litigants, obtaining prompt and orderly disposition of each claim or issue, and avoiding potentially inconsistent judgments.” *Diet Center, Inc. v. Basford*, 855 P.2d 481, 483-84 (Idaho App. Ct. 1993) (citing *Wing v. Amalgamated Sugar Co.*, 684 P.2d 307, 310 and 21 C.J.S. *Courts* § 188, at 222 (1990)). Consideration of these factors here compels staying proceedings pending the federal Court’s resolution of Qwest’s motion to dismiss and the dispositive issue of whether Section 415 bars AT&T’s complaint.

### ARGUMENT

Under the circumstances, the Commission should stay this action at least until a

QWEST CORPORATION’S MOTION FOR STAY OF PROCEEDINGS

determination of Qwest's Motion to Dismiss AT&T's similarly-filed complaint by the federal Court. As AT&T has acknowledged, the complaints are identical. *See* Exh. 1; Exh. 3, at ¶ 1. In both cases, AT&T asserts a purported breach of contract claim under its interconnection agreement with Qwest and seeks recovery for Qwest's failure to have interconnection agreements with two of AT&T's competitors approved pursuant to 47 U.S.C. 252, which failure allegedly thwarted AT&T's opportunity to opt-in under Section 252(i). Thus, the first factor – “the identity of the real parties in interest and the degree to which the claims or issues are similar” – is clearly met.

Second, while AT&T filed the Commission proceeding first and it is slightly further along, this is not a compelling consideration because here, under the unique structure of the Federal Act, the federal Court has the authority to review the Commission's orders and conclusively resolve the federal issues presented here. *See e.g., In re Application for Water Rights of U.S.*, 101 P.3d 1072, 1083 (Colo. 2004) (“The fact that the state water court obtained jurisdiction over the Black Canyon case before the federal case was initiated does not persuade us that the water court abused its discretion in granting the stay.”). With all respect to the Commission, the Commission may be unable to determine the whole controversy and settle all the rights of the parties, whereas the federal Court is in a position to determine the whole controversy and to settle all the rights of the parties.

As discussed, this case arises out of federally-mandated interconnection agreements that were created by the Federal Act. AT&T alleges a breach of its interconnection agreement with Qwest flowing from Qwest's alleged failure to follow *federal* law and obtain regulatory approval for certain interconnection agreements that Qwest had with AT&T's competitors, and from Qwest's failure to make those agreements available for AT&T to seek to adopt pursuant

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to *federal law*. To the extent that AT&T has any such claim, that claim is subject to the two-year statute of limitations found in the Federal Act. *See* 47 U.S.C. § 415. The Commission left open the applicable statute of limitations period, finding “that additional briefing is necessary to . . . address the statute of limitation question.” *See* Order No. 30247, at 5. Even if the Commission had expressly disposed of the question of whether Section 415 bars AT&T’s complaint, the Commission’s decision on a question of federal law would be subject to *de novo* review by federal Court.

The dispositive question – whether AT&T’s purported breach of contract claim arises under federal law and is therefore barred by Section 415 – is a clear question of federal law. The “issue of whether a limitations period creates a jurisdictional bar to untimely claims is itself a question purely of statutory construction.” *Iavorski v. U.S. I.N.S.*, 232 F.3d 124, 134 (2d Cir. 2000). Questions of statutory construction do not pose “the danger of venturing into areas of special agency expertise” and therefore federal law does not provide for any deference to the commission’s interpretations of federal law. *Id.*; *Bamidele v. INS*, 99 F.3d 557, 561 (3d Cir.1996) (“A statute of limitations is not a matter within the particular expertise of the INS. Rather, we consider this a clearly legal issue that courts are better equipped to handle.”) (internal quotation marks and citations omitted). Because federal law provides the rule of decision, a stay pending the federal Court’s resolution of Qwest’s motion to dismiss is appropriate. *In re Application for Water Rights of U.S.*, 101 P.3d at 1072 (staying “proceedings pending resolution of the federal questions raised in the Complaint filed in Federal District Court”).

Not only does the federal Court have concurrent jurisdiction with the Commission in this matter, *see Verizon Md, Inc.*, 535 U.S. at 643-44, but the federal Court also has jurisdiction over any direct appeals from the proceedings here. *See* 47 U.S.C. § 252(e)(6). This is one point of

QWEST CORPORATION’S MOTION FOR STAY OF PROCEEDINGS

law where the cases cited by AT&T are actually applicable. *See, e.g., Southwestern Bell Tel. Co. v. Brooks Fiber Comm'cns of Okla., Inc.*, 235 F.3d 493, 497 (10th Cir.2000) (finding that limiting federal court jurisdiction to matters involving state commission's approval or rejection of interconnection agreement "would lead to results Congress could not have intended"); *Southwestern Bell Tel. Co. v. Pub. Util. Comm'n of Tex.*, 208 F.3d 475 (5th Cir.2000) (finding that "federal court jurisdiction extends to review of state commission rulings on complaints pertaining to interconnection agreements and that such jurisdiction is not restricted to mere approval or rejection of such agreements"); *MCI Telecomm. Corp. v. Bell Atl.-Pa.*, 271 F.3d 491, 512 (3d Cir. 2001) (finding "[f]ederal jurisdiction for the review of commission decisions on interconnection agreements is exclusive," given Section 252(e)(4) and 252(e)(6)); *MCI Telecomm. Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 337-38 (7th Cir.2000) (finding that "Congress envisioned suits reviewing 'actions' by state commissions, as opposed to suits reviewing only the agreements themselves, and that Congress intended that such suits be brought exclusively in federal court"). Other than the Commission's authority under the Federal Act, state courts have no role in this system of adjudicating interconnection agreements. *See* 47 U.S.C. § 252(e)(4).

Finally, judicial and agency economy are served. By staying this action pending the federal Court's ruling on Qwest's motion to dismiss, the parties may obtain a prompt and orderly disposition of the action without a risk of inconsistent decisions. The federal Court's determination of the statute of limitations question would control in the Commission proceedings and potentially dispose of both cases. Moreover, the reality is that the federal Court will have to address and decide these matters whether it does so now or later on appeal from the Commission. It is unlikely that the proceedings here will be resolved finally and

QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS

conclusively without, as discussed above, resorting to the federal Court.

AT&T has conceded as much by filing the second action in the first place. As it acknowledges in its motion before the federal Court, the case may have to be heard by the federal Court because of concerns about the Commission's authority to grant the relief requested by AT&T. *See* Exh. 3 at 3 (claiming that the federal action "was filed purely as a protective measure in case the Idaho PUC were ultimately to find it could not grant all the relief to which AT&T is entitled (particularly money damages)"). These considerations raise substantial doubt that the Commission proceeding will completely resolve all the issues. To the contrary, the federal Court likely will have to address the identical claim whether in the present action before it or on appeal. Thus, grant of Qwest's motion to stay will save the Commission and the parties from expending resources unnecessarily in discovery and trial, particularly if the federal Court finds that Section 415 bars AT&T's action.

Furthermore, stay of this case causes no damage, hardship, or inequity to AT&T because AT&T's claim can be adequately and conclusively addressed by the federal Court. Both AT&T and Qwest will be treated fairly in not having to expend additional resources unless necessary. Moreover, a stay will preserve judicial and Commission resources, simplify the course of subsequent proceedings, and further the orderly and efficient course of justice.

### **CONCLUSION**

For the above reasons, Qwest respectfully requests that this Commission stay this case

conclusively without, as discussed above, resorting to the federal Court.

AT&T has conceded as much by filing the second action in the first place. As it acknowledges in its motion before the federal Court, the case may have to be heard by the federal Court because of concerns about the Commission's authority to grant the relief requested by AT&T. *See* Exh. 3 at 3 (claiming that the federal action "was filed purely as a protective measure in case the Idaho PUC were ultimately to find it could not grant all the relief to which AT&T is entitled (particularly money damages)"). These considerations raise substantial doubt that the Commission proceeding will completely resolve all the issues. To the contrary, the federal Court likely will have to address the identical claim whether in the present action before it or on appeal. Thus, grant of Qwest's motion to stay will save the Commission and the parties from expending resources unnecessarily in discovery and trial, particularly if the federal Court finds that Section 415 bars AT&T's action.

Furthermore, stay of this case causes no damage, hardship, or inequity to AT&T because AT&T's claim can be adequately and conclusively addressed by the federal Court. Both AT&T and Qwest will be treated fairly in not having to expend additional resources unless necessary. Moreover, a stay will preserve judicial and Commission resources, simplify the course of subsequent proceedings, and further the orderly and efficient course of justice.

## **CONCLUSION**

For the above reasons, Qwest respectfully requests that this Commission stay this case

QWEST CORPORATION'S MOTION FOR STAY OF PROCEEDINGS

pending the outcome of the federal Court's decision on Qwest's motion to dismiss. Stay will promote judicial and agency economy, will not prejudice AT&T, and will avoid substantial prejudice to Qwest.

DATED this 10th day of August, 2007.

Respectfully submitted,



---

Mary S. Hobson (ISB. No. 2142)  
999 Main. Suite 1103  
Boise, ID 83702  
Attorney for Qwest Corporation

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Motion for Stay of Proceedings was served on the 10 day of August, 2007 on the following individuals:

Jean D. Jewell	<u>  X  </u>	Hand Delivery
Idaho Public Utilities Commission	<u>      </u>	U. S. Mail
472 West Washington Street	<u>      </u>	Overnight Delivery
P.O. Box 83720	<u>      </u>	Facsimile
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Molly O'Leary	<u>      </u>	Hand Delivery
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Dan Foley	<u>      </u>	Hand Delivery
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\_\_\_\_\_  
Mary S. Hobson  
Attorney for Qwest Corporation

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**Qwest Corporation's  
Motion for Stay  
Of Proceedings  
Exhibit 1**

*Handwritten scribble*

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REC  
AM  
JAN 31 2007  
J. DAVID NAVARRO, Clerk  
By KATHY J. EBERLE  
DEPUTY

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

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AT&T COMMUNICATIONS OF THE MOUNTAIN )  
STATES, INC., )  
 )  
Plaintiff, )  
vs. )  
 )  
QWEST CORPORATION, )  
 )  
Defendant. )

CV 00 0702105

CASE NO. \_\_\_\_\_

COMPLAINT

COMPLAINT

AT&T Communications of the Mountain States, Inc. ("AT&T"), by its undersigned attorneys, hereby files this complaint against Qwest Corporation ("Qwest"). AT&T seeks damages for Qwest's breach of a contract with AT&T. A case alleging the same breach of contract is currently pending before the Idaho Public Utilities Commission and AT&T therefore is, at this time, filing this complaint only as a placeholder protective measure in the event limits on the Commission's jurisdiction or other factors require AT&T to seek full or partial relief in state court.

AT&T COMPLAINT AGAINST QWEST

AT&T currently intends to seek a stay of this proceeding pending the outcome of the proceeding before the Commission.

### GENERAL ALLEGATIONS

1. In 2001 and 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 also 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 AT&T Agreement (Ex. 1 hereto), Section 2.1; see also *id.*, Scope of Agreement, Section B.

2. Beginning in or about February 2000, Qwest entered into secret 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. 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 while the Eschelon Agreements were in effect. Qwest did not make these discounts available to AT&T as required by the AT&T Agreement.

3. Beginning in or about April 2000, Qwest entered into secret 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. These terms included a discount for McLeodUSA of up to 10% on all products and services it obtained from Qwest, and Qwest provided those discounts while the McLeodUSA

Agreements were in effect. Qwest did not make these discounts available to AT&T as required by the AT&T Agreement.

4. If Qwest had made the discounts in the secret agreements with Eschelon and McLeodUSA available to AT&T, AT&T would have availed itself of them.

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

6. As a consequence of Qwest's breach of the AT&T Agreement, 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 to it. Those damages exceed \$650,000.

#### THE PARTIES

7. 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.

8. 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

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

#### COUNT I

#### **Breach of Contract**

10. The allegations of paragraphs 1 through 9 are repeated and realleged as paragraph 10 of Count I.

11. Qwest's conduct as alleged above breached Qwest's obligations under the AT&T Agreement to make the discounts in the Eschelon and McLeodUSA Agreements available to AT&T.

12. Qwest's breaches of its contract with AT&T damaged AT&T in an amount equal to at least the aggregate amount of the price differential between what it paid Qwest and what it would have paid Qwest if it had been permitted to avail itself of the discounts in the Eschelon and McLeodUSA Agreements.

WHEREFORE, AT&T respectfully requests this Court to enter judgment in its favor and against Qwest in the aggregate amount of the price differential between what it paid Qwest and what it would have paid Qwest had the discounts in Qwest's agreements with Eschelon and McLeodUSA been made available to AT&T, plus punitive damages, interest, and costs, and such other and further relief as this Court deems just.

Dated this 31<sup>st</sup> day of January, 2007

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

By Molly O'Leary  
Molly O'Leary  
Richardson & O'Leary, PLLC

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

**Qwest Corporation's  
Motion for Stay  
Of Proceedings  
Exhibit 2**

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF IDAHO

_____	)	
AT&T COMMUNICATIONS OF THE	)	
MOUNTAIN STATES, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No. 07-cv-272-MHW
v.	)	
	)	
QWEST CORPORATION,	)	
	)	
Defendant,	)	
	)	
_____	)	

**QWEST CORPORATION’S MOTION TO DISMISS**

Qwest Corporation moves to dismiss the Complaint filed by Plaintiff AT&T Communications of the Mountain States, Inc. (“AT&T”) pursuant to Rule 12 of the Federal Rules of Civil Procedure.

AT&T’s Complaint must be dismissed because its claim is barred by the applicable limitations period or preempted by the filed-rate doctrine. Although AT&T asserts a breach of contract claim, AT&T studiously fails to mention the Federal Telecommunications Act for it inevitably would lead AT&T back to the fact that the interconnection agreements – and claims – at issue here arose under federal law and that the underlying operative facts occurred,



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 26th day of June, 2006, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Molly O'Leary  
Richardson & O'Leary  
515 North 27th Street  
P.O. Box 7218  
Boise, Idaho 83707  
molly@richardsonandoleary.com

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Registered Participants in the manner indicated:

Via first class mail, postage prepaid addressed as follows:

Theodore A. Livingston  
Dennis G. Friedman  
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dfriedman@mayerbrown.com

Dan Foley  
General Attorney & Assistant General Counsel  
AT&T West  
P.O. Box 11010  
Reno, Nevada 89520  
df6929@att.com

\_\_\_\_\_  
/s/  
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Attorney for Defendant

**Qwest Corporation's  
Motion for Stay  
Of Proceedings  
Exhibit 3**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

AT&T COMMUNICATIONS OF THE MOUNTAIN )  
STATES, INC., )  
 )  
Plaintiff, )  
vs. )  
 )  
QWEST CORPORATION, )  
 )  
Defendant. )

Case No. 07-CV-272-mhw

**AT&T'S MOTION TO STAY PROCEEDINGS  
PENDING OUTCOME OF PRIOR PROCEEDING ON  
IDENTICAL CLAIM AT IDAHO PUBLIC UTILITIES COMMISSION**

AT&T Communications of the Mountain States, Inc. ("AT&T") respectfully submits its motion to stay this proceeding pending the outcome of a prior proceeding on the identical claim that is currently pending before the Idaho Public Utilities Commission ("Idaho PUC"). That case has been underway for nearly a year and is well ahead of this one. Addressing the identical issues and claims here would merely create a risk of inconsistency and conflict and needlessly waste the Court's and parties' resources. In support of this motion, AT&T states as follows:

**BACKGROUND**

1. Nearly a year ago, on August 21, 2006, AT&T filed a complaint against Qwest Corporation ("Qwest") at the Idaho Public Utilities Commission. Att. 1 hereto. That complaint contains a single count, which alleged breach of contract by Qwest. That claim is identical to the sole claim in AT&T's complaint here, which alleges the same breach of contract by Qwest. *Compare* Cmplt. ¶¶ 11-12 with Att. 2 hereto (Amended Cmplt. at Idaho PUC), ¶¶ 13-14.

2. Qwest filed a motion to dismiss AT&T's complaint in the Idaho PUC case. After full briefing on that motion, supplemental briefing on questions raised by the PUC, and oral argument, the PUC denied Qwest's motion on February 16, 2007. Att. 3 hereto. The PUC also directed AT&T to amend its complaint to provide more detail and ordered AT&T and Qwest to file supplemental briefs addressing specific questions. *Id.*

3. AT&T filed its amended complaint (Att. 2) and AT&T and Qwest filed briefs addressing the PUC's questions. On April 12, 2007, the PUC, standing by its prior denial of Qwest's motion to dismiss, ordered the parties to develop a schedule to process the full case. Att. 4 hereto. The parties then did so, developing a schedule for settlement discussions, discovery, three rounds of written testimony, evidentiary hearings, and post-hearings briefs. Att. 5 hereto.

4. The PUC case has proceeded on that schedule, with a few agreed extensions along the way. Settlement discussions have been held. AT&T has served a first round of discovery and Qwest has responded. The parties have entered a protective agreement. AT&T's first round of written testimony is now due at the end of July.

5. During briefing on Qwest's motion to dismiss at the PUC, Qwest raised an issue regarding whether the PUC has authority to grant to full relief requested by AT&T. The PUC has not addressed that issue. Out of an abundance of caution, however, and to avoid any possible future problems under the Idaho statute of limitations, AT&T filed a materially identical complaint in Idaho state court on January 31, 2007. This was filed purely as a protective measure in case the Idaho PUC were ultimately to find it could not grant all the relief to which AT&T is entitled (particularly money damages). AT&T served that complaint on Qwest on May 30, 2007.

6. AT&T asked Qwest to agree to stay the state court proceeding pending the outcome of the ongoing case at the Idaho PUC, but Qwest refused. Instead, Qwest removed the case to federal court and filed a motion to dismiss that is in substance nearly identical to the motion to dismiss that the Idaho PUC already fully considered and denied.

7. AT&T is today filing its response to that motion to dismiss as well as its own motion to remand. It is critical to note, however, that AT&T is making these filings *only* to meet filing deadlines and avoid waiving any rights while there is not yet a stay in place, and believes that no further action should be taken on them at this time. Rather, the Court should decide AT&T's motion to stay before doing anything else, for if granted that will remove any present need to review or require further briefing on the motions to dismiss and remand.

ARGUMENT

8. Under well settled case law, “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 253-54 (1936). Under that “rule,” as then-Judge (now-Justice) Kennedy explained, “[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case \* \* \* whether the separate proceedings are judicial, administrative, or arbitral in character.” *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9<sup>th</sup> Cir. 1979), citing *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180 (1952) ; *see also Mediterranean Enterprises, Inc., v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9<sup>th</sup> Cir. 1983). A stay is appropriate if the decision in the other case may “narrow the issues in the pending case[] and assist in the determination of the questions of law involved.” *Landis*, 299 U.S. at 253-54.

9. This rule squarely applies here. The Idaho PUC proceeding will not only “bear upon” this case, it will resolve the identical claim. Barring unforeseen circumstances, the PUC proceeding will not simply “narrow the issues” or “assist” here, but will completely resolve all issues, so that this Court may never need to take any action.

10. Moreover, staying this case will avoid the risk of inconsistent or conflicting decisions on the same issues, promote judicial and administrative economy, and conserve the resources of the Court and parties. The Idaho PUC proceeding is significantly farther along than this one, as described above. The PUC has ruled on Qwest’s motion to dismiss (holding oral argument and twice calling for supplemental briefing to address its own specific questions), AT&T has issued its first (and largest) round of discovery and Qwest has responded, AT&T’s

direct testimony is due in a few weeks, and hearings and merits briefing have been scheduled.

By contrast, nothing has happened in the case at bar except Qwest's notice of removal.

*American Int'l Underwriters, (Philippines), Inc. v. Continental Ins. Co.*, 843 F.3d 1253, 1258 (9<sup>th</sup> Cir. 1987) (stay was appropriate where "substantive progress ha[d] been made" in the state actions, including rulings on motion and conducting discovery, whereas "[v]ery little progress ha[d] occurred in the federal lawsuit.").

11. Staying this case also will avoid "[p]iecemeal litigation," which "occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *Id.* That risk is very real here. Indeed, the only reason for Qwest's motion to dismiss and refusal to agree to a stay is that it *wants* this court to duplicate all of the effort already spent by the parties and Idaho PUC in that proceeding, yet reach a different result than the Idaho PUC on the identical issue. That risk can only be avoided by a stay. In this respect the situation is similar to *American Int'l Underwriters*, where "[t]he New York state court had already decided several substantive issues," meaning that "[i]f the district court decided to exercise jurisdiction, it would have to decide these matters anew, requiring duplicative effort and creating a strong possibility of inconsistent results." 843 F.3d at 1258.

12. In addition, while Qwest claims in its Motion to Dismiss that this case involves questions of federal law, the only issue raised by AT&T's breach-of-contract claim is whether Qwest has breached the terms of its interconnection agreement with AT&T. The Ninth Circuit has held that in disputes over the interpretation and enforcement of interconnection agreements, it is "the agreements themselves and state law principles" – not federal law – that "govern the questions of interpretation of the contracts and enforcement of their provisions." *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1128 (9<sup>th</sup> Cir. 2003), quoting *Southwestern Bell v.*

*Pub. Util. Comm'n*, 208 F.3d 475, 485 (5th Cir. 2000).<sup>1</sup> Relying on these cases, the Idaho PUC likewise held that “state law governs this dispute.” Att. 3 at 4.

13. Finally, issuing a stay in these circumstances will help prevent forum shopping. See *American Int'l Underwriters*, 843 F.2d at 1259. AT&T promptly asked Qwest to agree to a stay after AT&T served its complaint in this purely protective case. Qwest refused, even though proceeding on the same claim in both forums is plainly inefficient and would cause the parties to spend money on duplicate proceedings. The only possible motivation for this refusal is that Qwest seeks a different result on its motion to dismiss here, having already lost at the PUC. While Qwest may be willing to waste resources in hopes of getting inconsistent decisions, the Court does not have to play along.<sup>2</sup>

14. Qwest will not be prejudiced by a stay. Qwest has already had its chance to present its motion to dismiss to a qualified decisionmaker. It also will have a complete opportunity to present its case before the Idaho PUC and pursue any appeal, if necessary, in court. In addition, this case concerns past events and does not affect Qwest's current business or conduct. AT&T, by contrast, would be prejudiced by a stay, by having to expend resources on

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<sup>1</sup> The Fifth, Sixth, Seventh, Eighth, and Tenth Circuits agree. *Connect Comms. Corp. v. Southwestern Bell Tel.*, 467 F.3d 703, 707-09 (8th Cir. 2006) (applying “Arkansas contract law” to resolve dispute over enforcement of interconnection agreement, because “the ultimate issue is this case – interpretation of the Interconnection Agreement – is a state law issue”); *Michigan Bell Tel. Co. v. MCI Metro Access Transmission Servs., Inc.*, 323 F.3d 348, 355-56 (6th Cir. 2003) (“a state commission’s contractual interpretation of an interconnection agreement is governed by state, not federal, law”); *Southwestern Bell Tel. Co. v. Brooks Fiber Comms. of Oklahoma, Inc.*, 235 F.3d 493, 498 (10th Cir. 2000) (“The [interconnection] Agreement itself and state law principles govern the questions of interpretation of the contract and enforcement of its provisions”); *Southwestern Bell*, 208 F.3d at 485; *Illinois Bell Tel. Co. v. WorldCom Technologies, Inc.*, 179 F.3d 566, 574 (7th Cir. 1999) (a decision “‘interpreting’ an [interconnection] agreement contrary to its terms creates a different kind of problem – one under the law of contracts, and therefore one for which a state forum can supply a remedy”). Only the Fourth Circuit has reached a contrary result, in a decision with a well-reasoned and persuasive dissent. *Verizon Maryland, Inc. v. Global Naps, Inc.*, 377 F.3d 355 (4<sup>th</sup> Cir. 2004).

<sup>2</sup> Notably, Qwest has never argued that the PUC lacks jurisdiction over AT&T's claim (and the Idaho Supreme Court has held the PUC has such jurisdiction, *McNeal v. Idaho Pub. Utils. Comm'n*, 132 P.3d 442, 446 (Idaho 2006)), nor has Qwest contended that this Court has exclusive jurisdiction.

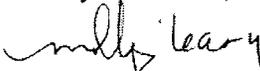
what everyone recognizes is a placeholder/protective case and having to defend against Qwest taking two bites at every apple.

15. For these reasons, the Court should stay this case pending the final outcome of the already pending proceeding at the Idaho PUC, and take no further action, including on AT&T's motion to remand (which it must file soon to meet the statutory deadline, unless the court were to stay this case immediately) or on Qwest's motion to dismiss. AT&T would be happy to provide the Court with periodic status reports on the PUC proceeding and to notify the Court when that proceeding is complete. In the meantime, however, any further proceedings here will only serve to needlessly waste the resources of both the Court and the parties and pose the risk of inconsistency, conflict, and duplication of effort between the Court and the Idaho PUC.

16. If for any reason the Court were not to stay the case entirely, it should at a minimum defer any action on Qwest's motion to dismiss until it rules on AT&T's motion for remand, which is being filed today in order to meet statutory deadlines in the absence of a current stay. Putting first things first, the Court should not rule on Qwest's substantive motion to dismiss until it first decides whether it even has jurisdiction.

WHEREFORE, AT&T respectfully requests that the Court stay this proceeding and take no further action until the prior proceeding on the identical claim at the Idaho PUC is completed. If no stay is issued, the Court should at a minimum defer action on the motion to dismiss until first addressing the jurisdictional issue raised in AT&T's motion to remand.

Respectfully submitted,

By: 

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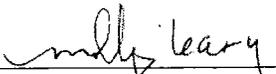
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CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of July, 2007, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing.

  
\_\_\_\_\_  
Molly O'Leary

**Qwest Corporation's  
Motion for Stay  
Of Proceedings  
Exhibit 4**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

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

Plaintiff,

vs.

QWEST CORPORATION,

Defendant.

**MOTION TO REMAND**

Case No. 07-CV-272-mhw

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*Read  
7/16/07*

Plaintiff AT&T Communications of the Mountain States, Inc. ("AT&T"), by and through its counsel and pursuant to 28 U.S.C. § 1447(c), moves that this matter be remanded to the District Court of the Fourth Judicial District of Ada County, State of Idaho, on the ground that the claims asserted in AT&T's complaint do not lie within the original jurisdiction of this Court. In support of this motion, AT&T states as follows:

### SUMMARY OF ARGUMENT

In this case, AT&T seeks damages against Qwest Corporation ("Qwest") for an alleged breach of a contract that set forth the terms and conditions by which AT&T's and Qwest's telecommunications networks would "interconnect." AT&T has brought this lawsuit as a protective measure in the event that limits on the jurisdiction of the Idaho Public Utilities Commission ("PUC") or other factors of which AT&T is not now aware prevent AT&T from having an opportunity to seek or obtain full relief in the parallel proceeding that is now pending before the PUC. Because the claim asserted in this case is identical to the claim in the PUC action, AT&T respectfully submits that its court action should be stayed until the PUC issues a final decision.<sup>1</sup> However, because (i) as both the PUC and the Ninth Circuit have concluded, a claim that requires the interpretation and enforcement of an interconnection agreement between telecommunications carriers presents a state law issue and (ii) the thirty-day period for filing a remand motion expires on July 19, AT&T files this motion to remand this case to state court.

The claim in this case belongs in state court because, as the PUC concluded after briefing and oral argument, "state law governs this dispute." *AT&T Communications of the Mountain States, Inc. v. Qwest Corp.*, Case No. QWE-T-06-17, Order No. 30247 at 4 (Idaho PUC Feb. 16, 2007) (Ex. A). As the PUC recognized, "a substantial body of cases support[s] our finding that state law governs the question of interpretation and enforcement of interconnection agreements."

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<sup>1</sup> AT&T accordingly has filed a motion to stay proceedings in this case.

*Id.* Most significantly, the Ninth Circuit case cited by the PUC expressly states that “[t]he Agreement itself and *state law* principles govern the questions of interpretation of the contract and enforcement of its provisions.” *Pacific Bell v. Pac-West Telecomm.*, 325 F.3d 1114, 1128 (9th Cir. 2003) (emphasis added). All but one of the other federal courts of appeals to have addressed the issue has agreed that a claim based on interpretation, and seeking enforcement, of an interconnection agreement presents a question of state contract law that arises under state law. Accordingly, the only conceivable basis for federal jurisdiction over a claim like the claim asserted in AT&T’s complaint would be supplemental jurisdiction under 28 U.S.C. § 1367, not original jurisdiction under § 1331. *Id.* at 498. And because there is no federal claim in this case that does lie within the court’s original jurisdiction, there is no basis for supplemental jurisdiction, and this case should be remanded to state court.

## INTRODUCTION

### A. The Contracts at Issue

During the relevant period, Qwest and AT&T were parties to a contract pursuant to which Qwest provided various products and services to AT&T. PUC Complaint ¶ 1. While the Qwest/AT&T contract was in effect, Qwest entered into two contracts with other competing carriers, Eschelon Telecom (“Eschelon”) and McLeodUSA Telecommunications Services, Inc. (“McLeod”). *Id.* ¶¶ 2-3. The terms of those contracts provided Eschelon and McLeod with at least a 10% discount below the rates that AT&T and TCG paid Qwest for the same or similar services. *Id.* Qwest did not make those discounts available to AT&T as required by the terms of the Qwest-AT&T agreement. *Id.*

### B. AT&T’s Complaint in the Idaho PUC

On August 21, 2006, AT&T filed a complaint against Qwest in the Idaho PUC. The complaint alleged that Qwest had breached its contract with AT&T by not providing AT&T the

AT&T MOTION TO REMAND - 3

same discounts that it made available to other carriers for the same or similar products and services.

Qwest answered and filed a motion to dismiss AT&T's complaint on the grounds that the (i) the breach of contract claim is federal in nature, (ii) the applicable statute of limitations for that claim is the two-year federal limitations period provided in 47 U.S.C. § 415, and (iii) AT&T's claim is time barred because the claim accrued more than two years prior to the date on which AT&T filed its complaint.

After briefing and oral argument, the PUC issued an Order on February 16, 2007, in which it denied Qwest's motion to dismiss. In that Order, the Commission concluded that "state law governs this dispute." Order No. 30247 at 4. In support of that conclusion, the PUC noted that, under the Governing Law provision of the agreement, "the parties intended that the Agreement be construed under state law while recognizing that the parties must also comply with various federal requirements." *Id.* The PUC further observed that "[t]here is a substantial body of cases supporting our finding that state law governs the question of interpretation and enforcement of interconnection agreements." *Id.* (citing *Pacific Bell v. Pac-West Telecomm.*, 325 F.3d 1114, 1128 (9th Cir. 2003)). The PUC then directed the parties to file additional briefing to aid the PUC in "determin[ing] the complaint's gravamen and address the statute of limitations issue." *Id.* at 5.

Following the submission of the requested supplemental briefs, the PUC issued another Order on April 12, 2007, in which it directed the parties to confer "for the purpose of developing a schedule to process this case." *AT&T Communications of the Mountain States, Inc. v. Qwest Corp.*, Case No. QWE-T-06-17, Order No. 30297, at 2 (Idaho PUC Apr. 12, 2007) (Ex. B). The

parties and PUC Staff subsequently established a schedule for pre-filed testimony and summary judgment motions.

**C. AT&T's State Court Complaint**

On January 31, 2007, AT&T filed a one-count complaint in the District Court of the Fourth Judicial District of the State of Idaho (Ada County). As AT&T explained in the initial paragraph of that complaint, its state court lawsuit asserts essentially the same claim that is raised in AT&T's complaint before the PUC. See State Court Complaint, at 1 (noting that "[a] case alleging the same breach of contract is currently pending before the Idaho Public Utilities Commission"). As AT&T further explained, it filed the state court lawsuit "only as a placeholder protective measure in the event limits on the Commission's jurisdiction or other factors require AT&T to seek full or partial relief in state court." *Id.*

AT&T served its state court complaint on Qwest on May 30, 2007. Removal Notice at 3 & Ex. 2 (state court docket sheet). Qwest filed its notice of removal to this Court on June 19, 2007.

**ARGUMENT**

**I. THIS MATTER SHOULD BE REMANDED BECAUSE AT&T'S CLAIM DOES NOT LIE WITHIN THIS COURT'S ORIGINAL JURISDICTION.**

**A. Removal is Proper Only if the Complaint Alleges a Claim Within this Court's Original Federal Question Jurisdiction.**

Under 28 U.S.C. § 1441(a), "[o]nly state-court actions that originally could have been filed in federal court may be removed by the defendant." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, the asserted basis for removal is the existence of a federal question (see Notice of Removal at 1), over which this Court would have original jurisdiction pursuant to 28

U.S.C. § 1331, which encompasses “all civil actions arising under the Constitution, laws, or treaties of the United States.”

The “presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’” which provides that “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 392. Under the well pleaded complaint rule, “the party who brings a suit is master to decide what law he will rely upon.” *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913) (Holmes, J.). In light of that principle, courts have been admonished to “interpret the removal statute narrowly and presume that the plaintiff may choose his or her forum” and have imposed the burden of establishing that removal is proper on the party seeking removal. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911 (7th Cir. 1993).

In the seminal case enshrining the well pleaded complaint rule, the Supreme Court explained that a claim arises under federal law when “the plaintiff’s statement of his own cause of action shows that it is based upon [federal] laws or [the federal] Constitution.” *Louisville & N.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908); see also *Cobb v. Contract Transport, Inc.*, 452 F.3d 543, 548 (6th Cir. 2006) (same). “[I]f a complaint alleges only state law based causes of action, it cannot be removed from state court to federal court even if there is a federal defense.” *Hernandez v. Conriv Realty Associates*, 116 F.3d 35, 38 (2d Cir. 1997); see also *Weathington v. United Behavioral Health*, 41 F.Supp.2d 1315, 1319 (M.D. Ala. 1999) (holding that a complaint that “asserts only state law causes of action \* \* \* fails to state a federal question on its face”).

**B. AT&T’s Claim Does Not Arise Under Federal Law.**

As the Idaho PUC correctly held, the breach of contract claim asserted in the current proceedings before the Commission – and, as a protective matter, in this Court as well – arises

under and is governed by state law. Order No. 30247 at 4 (“state law governs this dispute”). In reaching that conclusion, the PUC looked to the agreement itself. In particular, the PUC observed that the Governing Law provision of the agreement demonstrated that “the parties intended that the Agreement be construed under state law while recognizing that the parties must also comply with various federal requirements.” *Id.* The PUC further observed that “[t]here is a substantial body of cases supporting our finding that state law governs the question of interpretation and enforcement of interconnection agreements” (*id.*), citing the Ninth Circuit’s decision in *Pacific Bell v. Pac-West Telecomm.*, 325 F.3d 1114, 1128 (9th Cir. 2003).

The PUC’s ruling follows directly from the nature of the contracts at issue and is fully consistent with the pertinent case law, not only in the Ninth Circuit but also in the vast majority of other circuits that have addressed the matter. See, e.g., *Connect Communications Corp. v. Southwestern Bell Tel. Co., L.P.*, 467 F.3d 703 (8th Cir. 2006) (“the ultimate issue in this case – interpretation of the Interconnection Agreement – is a state law issue”); *Southwestern Bell Tel., L.P. v. Public Util. Comm’n*, 467 F.3d 418, 422 (5th Cir. 2006) (“The interconnection agreement and state law principles govern the interpretation and enforcement of agreement provisions”); *Michigan Bell Tel. Co. v. MCIMetro Access Transm. Serv., Inc.*, 323 F.3d 348, 355 (6th Cir. 2003) (noting that “a state commission’s contractual interpretation of an interconnection agreement is governed by state, not federal, law” and applying Michigan contract law in analyzing the alleged breach of the agreement); *Brooks Fiber*, 235 F.3d at 498-99 (holding that a state commission determination interpreting and enforcing an interconnection agreement is an “application of state contract law” and that therefore the basis for the federal courts’ jurisdiction to review such a determination is “supplemental jurisdiction” under 28 U.S.C. § 1367, not original jurisdiction under § 1331); *Southwestern Bell Tel. Co. v. Pub. Util. Comm’n of Tex.*, 208

F.3d 475, 485 (5th Cir. 2000) (“[S]tate law principles govern the questions of interpretation of the [interconnection] contracts and enforcement of their provisions”). As the Seventh Circuit has explained, “[a] decision ‘interpreting an agreement contrary to its terms creates a \* \* \* problem \* \* \* under the law of contracts.’” *Illinois Bell Tel. Co. v. WorldCom Techs., Inc.*, 179 F.3d 566, 574 (7th Cir. 1999). Accordingly, the court held that the federal courts lack jurisdiction over a claim seeking interpretation or enforcement of an interconnection agreement and that such a claim raises an “issue[] of state law” for which a “state forum” could “supply a remedy.” *Id.* In short, that nearly unbroken line of court of appeals decisions, including *Pacific Bell*, plainly hold that claims like AT&T’s here to enforce interconnection agreements arise under state law and must be resolved applying state law principles.<sup>2</sup> And because *Pacific Bell* is controlling here, it compels the conclusion that remand is required.

The reason that the courts have come to that conclusion is simple: the parties to an interconnection agreement are free to fashion the terms of their agreements as they see fit. Parties may contract “without regard” to the Telecommunications Act of 1996 or they may contract “with regard” to the Act; it is their choice. See *Verizon Maryland v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 638 (2002); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371-73 (1999); *Brooks Fiber*, 235 F.3d at 495; 47 U.S.C. § 252(a)(1). Thus, to the extent that federal law relates in any way to this case, it does so not of its own force, but solely because the parties chose to include references to federal law in their agreement. Interconnection agreements that incorporate federal law by reference no more arise under federal law than contracts that incorporate German law by reference arise under German law. Correspondingly, actions seeking interpretation and

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<sup>2</sup> The Fourth Circuit reached a contrary result in *Verizon Maryland, Inc. v. Global NAPs, Inc.*, 377 F.3d 355, 363-65 (4th Cir. 2004). That was a split decision, however, and the dissent presents a comprehensive and compelling case for why the majority should have reached the same result as all the other federal courts of appeal to have addressed the issue. See *id.* at 369-96 (Niemeyer, J., dissenting).

enforcement of those contracts correspondingly arise under state contract law, as the Idaho PUC has held in a matter involving precisely the same claim, citing controlling Ninth Circuit precedent.

Here, the sole claim in AT&T's complaint seeks enforcement of the terms of AT&T's contracts with Qwest. There is no federal claim stated on the face of that well pleaded complaint. Moreover, the fact that Qwest's interconnection agreement with AT&T references or incorporates federal standards does not transform a state law claim based on that contract into a federal question. More than a century ago, the Supreme Court stressed that "[t]he fact that the state statute and the mortgage refer to certain acts of Congress as prescribing the rule and measure of the rights granted by the state does not make the determination of such rights a Federal question." *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 509 (1900). Similarly, in *Gully v. First Nat'l Bank of Meridian*, 299 U.S. 109 (1936), the Court held that a lawsuit against a bank to enforce the terms of a contract made under Mississippi law, pursuant to which the bank assumed the liabilities of an insolvent national bank for non-payment of a state tax on bank shares, did not arise under federal law despite the fact that a federal statute was the source of the state's authority to tax national bank shares. *Id.* at 114-15; see also, e.g., *Mabe v. G.C. Servs. Ltd. P'ship*, 32 F.3d 86, 88 n.2 (4th Cir. 1994) ("A private contract cannot create federal question jurisdiction simply by reciting a federal statutory standard").

More recently, in telecommunications cases that are directly on point, the courts have upheld those same principles. As the Tenth Circuit noted, the contract at issue in *Brooks Fiber* tracked the language of an FCC rule setting forth the scope of the parties reciprocal compensation obligations under Section 251(b)(5) of the 1996 Act. 235 F.3d at 495. Yet the court had no difficulty concluding that "[t]he Agreement itself and *state law* principles govern

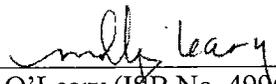
the questions of interpretation of the contract and enforcement of its provisions.” *Id.* at 499. Similarly, the Seventh Circuit has determined that the interpretation and enforcement of provisions of interconnection agreements that “precisely track the Act” present a question of state contract law, not a federal claim under the 1996 Act. *Illinois Bell*, 179 F.3d at 573-74; see also *Connect*, 467 F.3d at 703 (“[a]lthough federal law plays a large role in this dispute, the ultimate issue in this case – interpretation of the Interconnection Agreement – is a state law issue”).

### CONCLUSION

For the foregoing reasons, this matter should be remanded to the District Court of the Fourth Judicial District of Ada County, State of Idaho, and AT&T should be awarded its reasonable costs and attorneys’ fees “incurred as a result of the removal.” 28 U.S.C. § 1447(c).

DATED this 16th day of July, 2007.

AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.

By:   
Molly O'Leary (I&B No. 4996)  
RICHARDSON & O'LEARY, PLLC

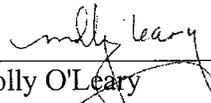
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Attorneys for Plaintiff AT&T Communications of the  
Mountain States, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of July, 2007, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing.

  
\_\_\_\_\_  
Molly O'Leary

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>AT&amp;T COMMUNICATIONS OF THE</b>	)	
<b>MOUNTAIN STATES, INC.,</b>	)	<b>CASE NO. QWE-T-06-17</b>
	)	
<b>COMPLAINANT,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>QWEST CORPORATION,</b>	)	
	)	<b>ORDER NO. 30247</b>
<b>RESPONDENT.</b>	)	

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On August 21, 2006, AT&T Communications of the Mountain States filed a complaint against Qwest Corporation, alleging that Qwest entered into “secret” interconnection agreements with Eschelon Telecom and McLeodUSA Telecommunications Services. The complaint alleged a single claim of breach of contract, stating that Qwest violated unspecified terms of an interconnection agreement between AT&T and Qwest (the “Interconnection Agreement”) by not disclosing these “secret” agreements. Complaint at 7-8.

On September 6, 2006, the Commission issued a summons to Qwest to answer the complaint. The Commission also granted the Motions for Limited Admission filed by AT&T’s out-of-state counsel. Order No. 30125. Qwest timely filed its answer to the complaint as a Motion to Dismiss on September 27, 2006. AT&T then filed a response to Qwest’s Motion to Dismiss on October 26, 2006.

On November 7, 2006, Qwest filed a Motion for Oral Argument with respect to the issues presented in the Motion to Dismiss. AT&T filed its response joining in Qwest’s request. The Commission granted the Motion, and set the oral argument for January 24, 2007. Order No. 30195. The Commission also directed the parties to file briefs addressing certain issues about which the Commission required further information. *Id.*

**POSITION OF THE PARTIES**

Qwest asked the Commission to dismiss AT&T’s complaint on two grounds. First, Qwest asserted that AT&T’s claim is actually a “federal claim masked in state law clothes.” Motion to Dismiss at 2. Given the federal claim, Qwest insisted the federal statute of limitations of two years applies to any claim brought under the federal Telecommunications Act of 1996

(the "1996 Act"). Qwest argued that the only reason AT&T is bringing this complaint as a breach of state contract law is to avoid the operation of the two-year limitations period that applies to these claims under 47 U.S.C. § 415.<sup>1</sup> Tr. at 4. Second, the Oregon Public Utility Commission's recent decision to dismiss a similar complaint against Qwest under the two-year statute of limitations should collaterally estop AT&T from filing this complaint. At oral argument, counsel for Qwest conceded that the second ground should be stricken in light of the Washington Utilities and Transportation Commission's contrary decision. Thus, we will not consider the second ground. Tr. at 7.

AT&T asserted that "all claims seeking interpretation and enforcement of interconnection agreements are governed by state law." Tr. at 19. At oral argument AT&T's counsel explained that the interconnection agreement included "an obligation on the part of Qwest to make available the terms and conditions of any other agreement for interconnection, unbundled network elements and resale services in those agreements' entirety." *Id.* at 17. AT&T concedes this "obligation" is based upon Section 252(i)<sup>2</sup> of the 1996 Act but insisted that their interconnection agreement deviates from or "doesn't precisely track the language of 252(i)" and it is this deviation or difference that requires interpretation of the agreement by the Commission. *Id.* at 24, 20.

### DISCUSSION AND FINDINGS

At the outset, we first address our jurisdiction. In its Motion to Dismiss, Qwest stated that "[t]his Commission's jurisdiction to hear actions to enforce the terms of interconnection agreements derives, not from state law, but from the Federal Act. ... Thus without delegated authority, the Commission lacks jurisdiction to act." Motion to Dismiss at 10. We are puzzled that Qwest declares this, even after our Supreme Court has clearly stated that the Commission does have the authority to interpret and enforce an interconnection agreement. *McNeal v. Idaho Public Util. Comm'n*, 142 Idaho 685, 132 P.3d 442 (Idaho 2006). In *McNeal*, the Court held that "Federal law indicates that a Commission does have the authority to interpret

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<sup>1</sup> "There is no question that AT&T has known about these [undisclosed] agreements, the McLeod and Eschelon agreements, ... since at least the summer of 2002." Tr. at 4.

<sup>2</sup> 47 U.S.C. § 252(i) provides in pertinent part: A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

and enforce an interconnection agreement.” *Id.* at 689, 132 P.2d at 446. In light of this ruling, we find that we have jurisdiction to hear this matter.

It is axiomatic that the interpretation of a contract begins with the language of the contract itself. *Albee v. Judy*, 136 Idaho 226, 31 P.3d 248, 252 (2001). If the contract terms are clear and unambiguous, the meaning and effect of the contract are questions of law to be determined from the plain meaning of its words. *Id.* If the contract terms are ambiguous, then the interpretation of those provisions is a question of fact which focuses upon the intent of the parties. *Bream v. Benscoter*, 139 Idaho 364, 79 P.3d 723 (2003).

Turning to the Agreement to see what its terms provide regarding a choice of law, we look at Section 21.1 (Governing Law). This provision states:

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 part of this Agreement, in which case the domestic laws of the State of Idaho, without regard to its conflicts of law principles, shall govern.

(Emphasis added). Like the 1996 Act, the section quoted above “is not a model of clarity” upon first reading. *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 397, 19 S.Ct.721, 738 (1999). When we asked the parties to address the effect and meaning of this provision with respect to the complaint, the parties offered little illumination. Qwest asserted that state law would “come into play in the relatively rare instances ... where federal law and/or FCC rulings leave a role for state law,” and otherwise reiterated its argument that AT&T’s claim was federal in nature and federal law would apply to its claim. Qwest Brief at 11. AT&T stated that this section “confirm[s] that state law governs the interpretation and enforcement of interconnection agreements,” and noted that there is a role for state law, such as when a breach of contract occurs, and that “state law has a key role in enforcing interconnection agreements.” AT&T Brief at 14, 15.

Fortunately, there are other contract terms that, when read together, clarify the point. Throughout the Agreement there are provisions that require compliance with various requirements of federal and state law. As the parties state themselves,

This Agreement is a combination of agreed terms and terms imposed by the [Commission’s] 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 ... .

Agreement (Recitals) at 4 (emphasis added). Thus, it is no surprise that the Agreement addresses requirements of both federal and state law.

We also turn to Section 27.1, Dispute Resolution, in the Agreement. This provision provides that a dispute regarding the Agreement may be resolved by arbitration. When coupled with Section 27.3, it states a fairly detailed set of instructions for how such arbitration should be conducted. Pertaining to our examination here is the Parties' agreement that "[t]he laws of Idaho shall govern the construction and interpretation of this Agreement." (Emphasis added). If the matter were submitted to arbitration, there is no question as to what law would be applied to the dispute. Based upon these provisions together, we find that the Governing Law provision is unambiguous, and that the parties intended that the Agreement be construed under state law while recognizing that the parties must also comply with various federal requirements.

There is also a substantial body of cases supporting our finding that state law governs the question of interpretation and enforcement of interconnection agreements. *See, e.g., Pacific Bell v. Pac-West Telecomm*, 325 F.3d 1114, 1128 (9<sup>th</sup> Cir. 2003). In order to determine whether Qwest violated the Interconnection Agreement as alleged by AT&T, we will have to interpret its provisions. If a violation is found, we will need to explore how to enforce the provisions. Thus, we conclude that state law governs this dispute.

Having found that state law applies, we must next decide whether the statute of limitations would put an end to this complaint. As noted above, Qwest argued that the federal two-year statute of limitations found at 47 U.S.C. § 415 should be applied because AT&T is actually hiding a federal law matter in state law clothes and federal law should govern. AT&T argued that the five-year statute of limitations provided by *Idaho Code* § 5-2-16 for a breach of contract action should apply because the matter is governed by state law. In the alternative, AT&T argued that if federal law is applied, the four-year statute of limitations provided by 28 U.S.C. § 1658(a) should apply.

In answering this question, we note that the Idaho Supreme Court has recently held that "the true *gravamen* of the plaintiffs' claims should control the question of which statute of limitations is applicable, rather than the manner in which the claims are actually pled." *Hayden Lake Fire Protection District v. Alcorn*, 141 Idaho 388, 111 P.3d 73 (Idaho 2005) (emphasis in original). Thus, if the gravamen of the complaint is a breach of contract, the five-year statute of

limitations would likely apply. If the gravamen of the complaint is a violation of the federal statute, a federal statute of limitations might apply.

To muddy the water even more, more than one federal statute of limitations might apply to this complaint: Either the two-year statute of limitations provided under 47 U.S.C. § 415 or the four-year statute of limitations under 28 U.S.C. § 1658(a) might apply, if we were to find that the gravamen of AT&T's claim is federal in nature. The 1996 Act merely amended the federal Act of 1934, and thus the two-year statute of limitations provided by the 1934 Act seems the logical statute to apply. See *AT&T v. Iowa Utilities Board*, 525 U.S. at 377; Pub. L. 104-104, 110 Stat. 56, § 1(b). However, certain case law indicates that the catch-all statute of limitations under 28 U.S.C. § 1658(a) may be the applicable law for a breach of a provision in the 1996 Act.<sup>3</sup>

Turning back to AT&T's complaint, we find that additional briefing is necessary to determine the complaint's gravamen and address the statute of limitation issue. Therefore, we direct AT&T to amend its complaint by March 9, 2007 to state with particularity the provisions of the Interconnection Agreement that were allegedly breached and the timeframe applicable for calculating damages. We further direct AT&T to concurrently file a brief that addresses the following issues:

1. When did AT&T have notice of the "secret" agreements such that the Idaho statute of limitations would start to run?
2. Three statutes of limitations have been proposed by the parties as potentially applying to this matter: (1) a two-year statute of limitations provided by 47 U.S.C. § 415; (2) a four-year statute of limitations provided by 28 U.S.C. § 1658(a); and (3) a five-year statute of limitations provided by *Idaho Code* § 5-2-16. Which statute of limitations applies to this matter?

In addition, we direct Qwest to file a brief by March 23, 2007 that addresses the two issues set forth above.

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<sup>3</sup> See *City of Rancho Palos Verdes, California v. Abrams*, 544 U.S. 113, 125 S.Ct. 1453, 1460 fn. 5 (2005) ("[s]ince the claim here rests upon violation of the post-1990 [1996 Act], § 1658(a) would seem to apply."); *E.Spire Communications, Inc. v. Baca*, 269 F.Supp.2d 1310, 1320 (D. N.M., 2003); *Verizon Maryland Inc. f/k/a/ Bell Atlantic-Maryland, Inc. v. RCN Telecom Services, Inc. f/k/a RCN Telecom Services of Maryland Inc.*, 232 F.Supp.2d 539, 554 (D. Md., 2002) ("When the amendment [to the act] itself creates the cause of action upon which the plaintiff sues, without reference to the preexisting act, the cause of action clearly aris[es] under the post-1990 amendment, and the general four-year statute of limitations applies."); *Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 107 F.Supp.2d 653 (E.D.Pa., 2000).

**ORDER**

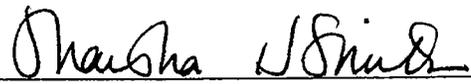
IT IS HEREBY ORDERED that Qwest's Motion to Dismiss is denied at this time.

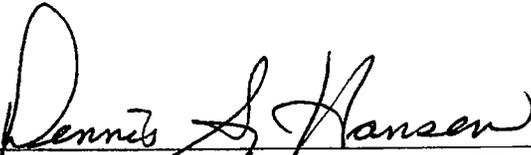
IT IS FURTHER ORDERED that AT&T shall amend its complaint by March 9, 2007 to state with particularity which provisions of the Interconnection Agreement between AT&T and Qwest were allegedly breached by Qwest, and what is the timeframe for which it seeks damages.

IT IS FURTHER ORDERED that AT&T shall submit a brief by March 9, 2007 addressing the two issues set forth above, and that Qwest shall submit a brief by March 23, 2007 addressing the two issues set forth above.

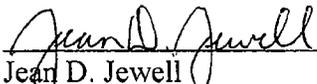
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16<sup>th</sup> day of February 2007.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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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	)	CASE NO. QWE-T-06-17
vs.	)	
	)	AMENDED COMPLAINT
QWEST CORPORATION,	)	
	)	
Respondent.	)	

AT&T AMENDED COMPLAINT AGAINST QWEST

**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.

AT&T COMPLAINT AGAINST QWEST - 4

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)<sup>1</sup>, 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.

Dated this 9th day of March, 2007

AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.

By \_\_\_\_\_

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

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

AT&T COMPLAINT AGAINST QWEST - 7

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