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September 7, 2007

VIA HAND DELIVERY

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

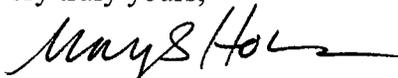
RE: Docket No. QWE-T-06-17

Dear Ms. Jewell:

Enclosed for filing with this Commission is the original and seven (7) copies of **QWEST CORPORATION'S REPLY IN SUPPORT OF QWEST'S MOTION TO STAY OF 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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Attorneys for Qwest Corporation

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

Qwest Corporation ("Qwest") files this Reply in Support of its Motion For Stay of 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"). AT&T's opposition provides no sound reason for denying Qwest's motion for stay. Notwithstanding AT&T's creative descriptions of the federal action, the fact remains that an identical action is pending before the federal court of Idaho—an action that

AT&T, not Qwest, filed and that turns on a dispositive question of federal law that will govern (and potentially eliminate) AT&T's complaint here.

AT&T skirts the reality that the federal court has concurrent jurisdiction over the case and instead wastes the majority of its opposition trying to obscure that fact by distorting Qwest's articulated reasons for the stay. Under well-established abstention principles, there is no basis for the federal court to stay that action. Moreover, the federal court's ruling on the statute of limitations question—a question of federal law—will control in the Commission proceeding and it likely will be decided in response to Qwest's motion to dismiss rather than at some later point.

Administrative economy is thus served by staying this proceeding until the federal court rules so that no additional resources are wasted. 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, and because AT&T has not demonstrated any compelling reason why the Commission should not grant Qwest's motion to stay, Qwest respectfully requests that the Commission grant the motion and stay the current proceedings.

ARGUMENT

The irony in AT&T's opposition to this stay should not be lost on the Commission. In making its argument, AT&T devotes much of its opposition pleading to a claim that Qwest should not get a second bite at the apple—even though AT&T has admitted that it filed the second action *itself* in case its efforts fall short before the Commission. AT&T essentially expects Qwest to concede its legal rights so that AT&T itself may—at its convenience—seek that second bite. Clearly, this kind of argument warrants no consideration.

And this is clearly a case where the merits warrant a stay of this Commission

proceeding. AT&T does not challenge the circumstances that would justify granting a stay here. Rather, the bulk of AT&T's opposition rests on AT&T's mischaracterization of Qwest's motion, claiming that the ability of the federal Court to hear Qwest's motion to dismiss depends on the court's jurisdiction to review or hear appeals, and therefore does not provide a basis for allowing Qwest's motion to dismiss. AT&T Opposition to Stay at 4.

AT&T's argument is both confused and groundless. The federal Court clearly has concurrent jurisdiction over AT&T's action. As a federal Court with jurisdiction over questions of federal law, there is no basis under well-established abstention principles for the federal Court to stay that action. Quite the contrary, the general rule is that federal courts must exercise their jurisdiction concurrently with courts or agencies of other jurisdictions, *Neuchatel Swiss Gen. Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193, 1195 (9th Cir. 1991). Only exceptional circumstances will justify a stay of the federal proceedings. *Moses H. Cone Memorial Hospital v. Mercury Const. Corp.*, 460 U.S. 1, 23-26 (1983); *American Int'l Underwriters, (Philippines), Inc. v. Continental Ins. Co.*, 843 F.3d 1253 (9th Cir. 1987)).

AT&T has not met this high standard and the federal court is unlikely to stay the case AT&T itself filed, especially given the dispositive issue of federal law before the court. Indeed, precedent suggests that the federal Court would risk abusing its discretion if it stayed that proceeding. *Cone*, 460 U.S. at 28 (adding that "[i]f there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all").

It follows that this Commission should itself hold its proceedings in abeyance pending action on the federal question presented by AT&T's federal court complaint. This is especially appropriate process in this circumstance, where the federal court will be addressing a potentially dispositive question of federal law. Where a federal ruling will trump or

substantially simplify the issues in other proceedings, courts and agencies have not hesitated to stay such separate proceedings—even if further along than this one before the Commission — in the interest of judicial economy. *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” and therefore staying “proceedings pending resolution of the federal questions raised in the Complaint filed in Federal District Court” was reasonable). Indeed, this consideration is the primary reason for Qwest’s motion here and weighs heavily in favor of staying this action so that no additional resources are wasted on a case that is precluded by the federal two-year statute of limitations. AT&T has not disputed this proposition.

With no legal support, AT&T tries to bolster its baseless opposition by claiming that Qwest has not cited any authority for the contention that federal courts have exclusive jurisdiction and that the Federal Act’s bar on state court jurisdiction “extends only to ‘the action of a State commission in approving or rejecting an agreement under this section,’” thereby implying that state courts may have some role in addressing disputes involving interconnection agreements. *Id.* at 4 and n.1. Numerous federal and state courts have rejected this argument as frivolous, including decisions cited in Qwest’s motion that AT&T conveniently ignores. *See* Qwest Corp. Motion to Stay at 7-8 (citing *Southwestern Bell Tel. Co. v. Brooks Fiber Comm’cns of Okla., Inc.*, 235 F.3d 493, 497 (10th Cir. 2000) (finding that federal court jurisdiction is not limited only to a state commission’s approval or rejection of interconnection agreement, as such a limitation “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”).

State courts have reached a similar conclusion that should guide the Commission to grant this stay. *See e.g., Union Tel. Co. v. Wyo. Pub. Serv. Comm’n*, 142 P.3d 678, 685, 686 (Wyo. 2006) (discussing the clear weight of authority supporting this conclusion and finding that the state district court correctly determined that it lacked subject matter jurisdiction to review state commission decision involving an interconnection agreement); *MCI WorldCom, Inc. v. Penn. Pub. Util. Comm’n*, 844 A.2d 1239, 1249 (Pa. 2004) (finding “that Section 252(e)(5) and 252(e)(6) are indeed meant to be read together and, as a result, it is clear that jurisdiction over matters involving appeals from state commission decisions on interconnection agreements lies exclusively in federal courts”).

Indeed, the exclusive nature of federal jurisdiction over interconnection agreements under the Federal Act refutes any presumption of concurrent state court jurisdiction. This presumption “is, of course, rebutted if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim.” *Tafflin v. Levitt*, 493 U.S. 455, 459 (1990). Here, the federal Act is explicit. *See* 47 U.S.C. § 252(e)(4). In passing the Federal Act, “Congress

made an explicit statutory directive divesting state courts of jurisdiction to review state commission determinations on interconnection agreements. Such authority is enjoyed exclusively by the federal courts.” See *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Comm'n*, 295 F. Supp. 2d 529 (E.D. Pa. 2003); *Penn. Pub. Util. Comm'n*, 844 A.2d at 1249 (agreeing that Sections 252(e)(4) and 252(e)(6) made it clear that Congress expressly divested state courts of jurisdiction to review state commission determinations involving interconnection agreements); *Union Tele. Co.*, 142 P.3d at 685-86 (Wyo. 2006) (same).

Because the federal Court has jurisdiction over AT&T’s claim and state courts have no role in this system, it is unlikely that the federal Court will defer Qwest’s motion. Given that reality, judicial economy is not served by having both actions proceed simultaneously, particularly when this Commission will be bound by the determinations of the federal Court on questions of federal law.

This case is thus far from the situation in *Roberts v. Hollandsworth*, 616 P.2d 1058 (Idaho 1980), where comity and federalism considerations made inconsistent judgments a real concern; there are no comity or federalism concerns here. Under the Federal Act, “[g]eneral principles of comity or federalism do not override that express statement of Congressional intent, just as they do not override the general grant of jurisdiction provided by 28 U.S.C. § 1331 to review precisely the type of question involved in this case.” *Verizon Del., Inc. v. AT&T Telecommc’ns of Del., LLC*, 326 F.Supp.2d 574, 580 (D. Del. 2004) (noting that an exception to federal jurisdiction simply because state contract principles are required to interpret an interconnection agreement—products of federal statute—“would effectively swallow the right to bring an action in federal court and render that right illusory, which is an intolerable result”). As this Commission has found, the Commission is “acting under

Congressionally delegated power to interpret those [interconnection] agreements” and is therefore subject to federal court review “regardless of whether the [Commission’s] decision is rooted in state law principles.” *Verizon Del., Inc.*, 326 F.Supp.2d at 579.

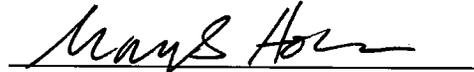
Of course, this case does not even turn on the application of state law principles but rather the question of whether Section 415 of the Federal Act applies to bar AT&T’s action in the first instance. This is a question that the federal court will have to resolve, and that already is presented to the court in Qwest’s pending motion to dismiss. There simply is no possibility of conflicting judgments on this question; the federal courts control. Thus, this case presents the type of circumstances that the *Roberts* court suggested would justify a state court or agency “in staying a state court action pending the termination of a similar controversy pending [in] the federal courts.” *Roberts*, 616 P.2d at 1061.

CONCLUSION

For these reasons, Qwest requests that the Commission grant its motion to stay. 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.

DATED this 7th day of September, 2007.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Reply in Support of Motion for Stay of Proceedings was served on the 7th day of September, 2007 on the following individuals:

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