

**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. 30474</b>
	)	
<b>RESPONDENT.</b>	)	
	)	

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On November 28, 2007, AT&T Communications of the Mountain States, Inc. and Qwest Corporation filed a Joint Motion requesting that the Commission issue an expedited Order accepting the parties' settlement of their complaint case and dismissing AT&T's complaint with prejudice. Joint Motion at 1. Each party would bear its own costs and attorneys fees. Given the parties' settlement, we dismiss AT&T's complaint with prejudice.

**BACKGROUND**

In August 2006, AT&T filed a complaint against Qwest alleging that Qwest had entered into "secret" interconnection agreements with two other telecommunications carriers. AT&T alleged a breach of contract arguing that Qwest violated terms of the interconnection agreement between AT&T and Qwest by not disclosing the "secret" agreements. Section 252(e)(1) of the federal Telecommunications Act of 1996 provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State [regulatory] commission." 47 U.S.C. § 252(e)(1); *see also* 47 U.S.C. § 252(a)(1). AT&T claimed that the secret agreements provided lower rates for certain telecommunications services, and had these "secret" agreements been disclosed, AT&T would have had an opportunity to also obtain the lower rates. 47 U.S.C. § 252(i).

Pursuant to the Idaho Supreme Court's opinion in *McNeal v. Idaho PUC*, 142 Idaho 685, 132 P.3d 442 (2006), the Commission found that it had authority to interpret and enforce the AT&T-Qwest interconnection agreement. The parties subsequently engaged in extensive prehearing motions. In Order No. 30247 issued in February 2007, the Commission directed the

parties to develop a schedule to process this case. In accordance with the modified schedule, AT&T filed its direct testimony on August 16, 2007.

While the Commission's proceeding was under way, AT&T also filed "a materially identical complaint" in Idaho State Court in January 2007. AT&T served its state Court complaint on Qwest in May 2007. On June 19, 2007, Qwest removed the state Court complaint to federal Court and subsequently filed a Motion to Dismiss the complaint. The federal Court scheduled oral argument for November 27, 2007.

Given the federal Court proceeding, Qwest filed a Motion for the Commission to stay its evidentiary proceeding. Over AT&T's objection, the Commission granted Qwest's Motion to Stay in Order No. 30407 issued September 24, 2007, so that the federal Court action could run its course.

### **THE JOINT MOTION**

Having settled their dispute, both parties move the Commission for an Order accepting the settlement and dismissing AT&T's complaint with prejudice. Motion at 1. The parties assert that the settlement is consistent with state and federal law and in the public interest. *Id.* at 2. The parties further state that the settlement is "of essentially a private dispute that has no significant implications for regulatory law or policy, or for other utilities or customers and is, therefore, appropriate for the Commission's summary acceptance under Rule of Procedure 274." *Id.*

The parties also indicate that the settlement resolves proceedings in nine other states as well as other unrelated claims that Qwest has pursued against AT&T. The Commission's acceptance of the settlement "will serve to implement the parties' global settlement" in all the other states. *Id.* Consequently, the parties request that

the Commission accept the negotiated resolution of the parties as a settlement of a private dispute pursuant to Rule of Procedure 274, and enter an expedited order dismissing the complaint with prejudice and with each party bearing its own attorneys' fees and costs.

Joint Motion at 2. The parties did not submit the settlement terms or any settlement materials with the Motion.

### **DISCUSSION**

As the parties correctly indicate, Rule 274 prescribes the Commission's procedures for reviewing settlements. Under Rule 274 the Commission has the discretion and flexibility to

adopt appropriate procedures when considering settlements offered by parties. “For example, the Commission may summarily accept settlement of an essentially private dispute that has no significant implications for regulatory law or policy or for other utilities or customers upon the written request of the affected parties.” Rule 274, IDAPA 31.01.01.274 (emphasis added).

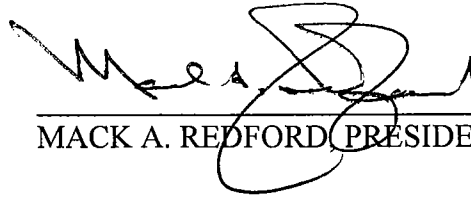
Because the parties did not file the terms of the settlement, the Commission is unable to determine whether the settlement “is consistent with state and federal law and in the public interest.” However, there were no intervenors in this case and the dispute was between Qwest and AT&T. The Commission recognizes that the parties have negotiated a settlement of their dispute. Based upon their resolution of the dispute, we find it reasonable to dismiss the complaint with prejudice, with each party bearing its own costs and attorneys’ fees.

### **ORDER**

IT IS HEREBY ORDERED that the Joint Motion filed by AT&T and Qwest dismissing AT&T’s complaint with prejudice is granted. Consistent with the Motion, each party shall bear its own costs and attorneys’ fees.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. QWE-T-06-17 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17<sup>th</sup>  
day of December 2007.



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MACK A. REDFORD, PRESIDENT



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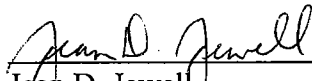
MARSHA H. SMITH, COMMISSIONER



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JIM KEMPTON, COMMISSIONER

ATTEST:



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Jean D. Jewell  
Commission Secretary

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