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Alex M. Duarte
Corporate Counsel

February 24, 2006

Ms. Annette Taylor
Administrative Assistant
Administrative Hearings Division
Public Utility Commission of Oregon
P. O. Box 2148
Salem, OR 97308-2148

Re: UM 1232- Qwest's Reply to Complainants' Response to Motion to Dismiss

Dear Ms. Taylor:

Pursuant to OAR 860-013-0050(2), OAR 860-011-0000(3), ORCP 10C, and UTCR 10(b), Qwest hereby submits its reply to the response that complainants AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon, Time Warner Telecom of Oregon, LLC, and Integra Telecom of Oregon, Inc. filed on February 17, 2006 to Qwest's motion to dismiss the Amended Complaint that Qwest filed on January 13, 2006. We enclose the original and five copies of that reply, and we are serving all parties by regular mail and electronically.

Thank you for your attention to this matter. If you have any questions regarding this response, please feel free to call me at your convenience.

Very truly yours,

Alex M. Duarte

cc Service List (w/ encl.)

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1232

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND TCG OREGON; TIME WARNER TELECOM OF OREGON, LLC; AND INTEGRA TELECOM OF OREGON, INC., Complainants, v. QWEST CORPORATION, Respondent.	QWEST CORPORATION'S REPLY TO COMPLAINANTS' RESPONSE TO QWEST'S MOTION TO DISMISS THE COMPLAINANTS' AMENDED COMPLAINT

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INTRODUCTION

Pursuant to OAR 860-013-0050(2), OAR 860-011-0000(3), ORCP 10C, and UTCR 10(b), respondent Qwest Corporation ("Qwest") hereby requests that the Public Utility Commission of Oregon ("the Commission") consider this reply to the response that complainants AT&T Communications of the Pacific Northwest, Inc., and TCG Oregon ("AT&T"), Time Warner Telecom of Oregon, LLC ("Time Warner"), and Integra Telecom of Oregon, Inc. ("Integra") (collectively "Complainants") filed on February 17, 2006 to Qwest's motion to dismiss the Amended Complaint that Qwest filed on January 13, 2006. None of the contentions that Complainants advance in their response merits serious consideration. Complainants have failed to carry their burden of establishing any federal private right of action and are barred by the Telecommunications Act of 1996 ("the Act") statute of limitations from bringing this action because the agreements on which they premise their action became public in March 2002. Even if Complainants were able to maintain any of their claims, the Commission would not be the proper forum because the Commission lacks the authority to award reparations in cases of unjust discrimination or overcharges. All these reasons compel the Commission to dismiss the Amended Complaint in its entirety.

I. THE COMMISSION HAS NO AUTHORITY TO AWARD COMPLAINANTS' REQUESTED RELIEF, AND COMPLAINANTS PROFFERED AUTHORITY IS UNPERSUASIVE

Complainants spend much effort advancing their arguments that the Commission has the authority to award reparation based on a misreading of the Court of Appeals ruling in Pacific Northwest Bell Telephone Company v. Katz, 841 P.2d 652 (Or. App. Ct. 1992), and a subsection of ORS 756, 500(2) taken out of context. Qwest's motion to dismiss explains why Oregon law does not provide the Commission with the express or implied statutory authority to award the

relief sought by Complainants. Qwest will therefore devote this section to addressing why Pacific Northwest Bell and ORS 756.500(2) do not support Complainants' arguments.

Pacific Northwest Bell is distinguishable from the instant case. Pacific Northwest Bell involved a situation where the Commission was investigating rates under the specific authority provided in ORS 759.180 and ORS 759.185. The Commission was proceeding through the ratemaking process and first ordered interim rates, but later determined that an order decreasing rates was needed, reversing its earlier order increasing rates. Pacific Northwest Bell, 841 P.2d at 655. The Pacific Northwest Bell court determined that the Commission had "the power to order a refund of amounts over collected under temporary rates that failed to comply with an ordered revenue reduction." Pacific Northwest Bell, supra, 841 P.2d at 656. The court focused only on the scope of the Commission's authority in the ratemaking process. No similar rate determination has been made here, and Complainants do not purport to seek a rate determination under ORS 759.180. Complainants instead attempt to use Pacific Northwest Bell to make the claim that the Commission's authority also includes reparations awards in quasi-judicial proceedings that concern alleged unjust discrimination. This situation, however, has been squarely disposed of by the Oregon Supreme Court.

The broad reading that Complainants give to Pacific Northwest Bell directly conflicts with long-standing Oregon Supreme Court law. In McPherson v. Pacific Power & Light Company, 207 Or. 433, 449 (1956), the Supreme Court held that "the Commissioner has no authority to award any reparations, either for unreasonable or unjustly discriminatory rates, or for overcharges." Pointing to the provision to which Complainants have pinned their hopes—that the Commissioner shall not grant any order of reparation to any person not a party to the proceedings in which such reparation order is made—the Supreme Court in McPherson explained:

> This act, however, is only a uniform practice act which defines the rules for all proceedings over which jurisdiction has been conferred upon the commissioner in respect to the various businesses within his jurisdiction. The railroad statutes confer jurisdiction upon the commissioner to award reparation. No such provision is found in the public utility statutes. To determine the jurisdiction of the commissioner over a particular business, one must refer to the substantive statutes governing that business. McPherson, supra at 452. (Emphasis added.)

Given the Supreme Court's understanding, Complainants' arguments are unfounded. ORS 756.500(2) is not superfluous simply because the Commission does not have the ability to order reparations in the instant case. Other chapters or sections empower the Commission to award reparation in appropriate instances, and this is not one.

With the exception of Pacific Northwest Bell, Qwest is not aware of any other case in which a court or the Commission has relied on ORS 756.500(2) and ORS 756.040 (describing the Commission's general powers) as a basis for implying authority to order reparations from a telecommunications utility for overcharges or unjust discrimination. Indeed, to the contrary, the Commission has repeatedly acted pursuant to McPherson and denied any authority to award reparations based on unreasonable or unjustly discrimination or overcharges. See e.g., In re Portland Gen. Elec., Order No. 02-227, 2002 WL 1009970, at *6 (Or. P.U.C. Mar. 25, 2002); Util. Reform Project v. Portland Gen. Elec. Co., Order No. 03-629, 2003 WL 22938480, at *2 (Or. P.U.C. Oct. 22, 2003). Furthermore, the fact the Legislature has provided the Commission and Complainants with other specific mechanisms strongly negates against finding an implied power to award reparations pursuant to ORS 756.500(2) and ORS 756.040. City of Klamath Falls v. Envtl. Quality Comn'n, 870 P.2d 825, 833 (1994) ("Agencies are creatures of statute" and derive their authority from "the enabling legislation that mandates that particular agency's function and grants powers"); see e.g., ORS 759.900 (providing any persons injured by a telecommunications utility with a cause of action before a court); ORS 756.160, ORS 756.180 (allowing the Commission to seek enforcement of statutes and ordinances relating to utilities or enforcement of utility laws in the courts). A contrary conclusion would contravene the rule that

a specific grant of authority limits the authority that can be implied under a general grant and would also conflict with Oregon Supreme Court law and the unwavering practice and precedent of the Commission.

For the reasons discussed here and in Qwest's motion to dismiss, Complainants' arguments are without merit. The Commission lacks the authority and jurisdiction to award the relief Complainants seek and therefore should dismiss the complaint.

II. COMPLAINANTS' CLAIMS DEPEND ON FEDERAL LAW SO THAT SECTION 415'S LIMITATIONS PERIOD PRECLUDES THE ACTION

A. Complainants' Statement of the Facts is False; Complainants Had Access to the Agreements as early as March 13, 2002 and therefore Knew or Should Have Known of the Basis for Any Causes of Action

Complainants never dispute that they had knowledge of the interconnection agreements more than two years prior to filing this complaint. Indeed, in their response, Complainants acknowledge that Minnesota initiated complaint proceedings against Qwest for unfiled interconnection agreements with Eschelon and McLeodUSA in February 2002. (Complainants' Response to Qwest's Motion to Dismiss ("Response"), p. 2.) Complainants, however, assert that they "did not have access to these agreements because they were protected from disclosure as confidential or 'trade secret' information." (Response, pp. 2, 3.) Complainants would therefore like the Commission to believe that they could not have any knowledge until October 25, 2004, the date the Administrative Law Judge issued the protective order in docket UM 1168, and that this triggered the running of the statute of limitations. (See Response, p. 12 ("Only then were the Complainants allowed to see the McLeodUSA and Eschelon agreements in Oregon").)

Complainants' contentions are groundless. The Minnesota Public Utilities Commission publicly disclosed the agreements at issue there as early as March 13, 2002. (See Exhibit 1.) At a hearing on March 5, 2002, Qwest stated that it would no longer insist on keeping the agreements confidential or as a trade secret. In a March 15, 2002 letter to the Minnesota Public

Utilities Commission, Qwest reiterated its position: "Consistent with Qwest Corporation's indication at the March 5, 2002 hearing in the above-referenced docket, Qwest has re-designated these exhibits [the interconnection agreements] as Non-Trade Secret." Id.

Complainants' purported explanation that they were prohibited from gaining access to the agreements is clearly unfounded, and they cannot honestly deny they did not have access to the agreements at that time.1 Complainants in their response admitted they were aware in March 2002 of the interconnection agreements and the Minnesota proceedings. (Response, p. 12.)

Moreover, AT&T submitted 24 pages of comments on June 28, 2002 in docket UM 823, opposing Qwest's application for reentry into the interLATA toll (long distance) market pursuant to section 271 of the 1996 Telecommunications Act. (Exhibit 4.) In its comments, AT&T focused almost exclusively on these unfiled agreements, including much detail about these agreements and the proceedings in Minnesota, Arizona, Iowa and other states. (Id.) These comments also included numerous specifics about the subject Eschelon agreements themselves. (See e.g., Exhibit 4, pp. 12-13.) As the service list in UM 823 shows, counsel for the Complainants were served with these comments.

Accordingly, nothing otherwise prevented them from pursuing their claims at that time. Consequently, there is absolutely no merit to their contention that the statute of limitations did not begin to run until at least October 2004. Under the discovery rule, Complainants should have discovered or, by the exercise of due diligence, could have discovered the basis for their claims in March 2002. See Pavlak v. Church, 727 F.2d 1425, 1428 (9th Cir. 1984). Therefore, Complainants are now barred under 47 U.S.C. § 415 from bringing these claims.

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1 In addition to admitting that Complainants were aware of the proceedings and the existence of the agreement, there is no merit to any purported attempts by Complainants to distance themselves from their "affiliates." Complainants' representatives in this action were themselves also on the service lists in other earlier state proceedings involving Qwest. For example, both Brian Thomas of Time Warner and Letter Friesen of AT&T are listed party representatives in the Washington state proceedings. (See Exhibits 2 and 3 [for the sake of brevity, Exhibit 3includes only the cover page, the service list and the subject agreement, and not all 11 agreements referenced in the letter].)

B. Complainants' Action Involves Questions of Federal Law that Require Application of Section 415

Section 415 provides the applicable limitation period here. Interconnection agreements are not ordinary state law contracts as Complainants would lead the Commission to believe. Rather, as Qwest developed in its motion to dismiss, interconnection agreements are "instrument[s] arising within the context of ongoing federal and state regulation." E.Spire Commc'ns, Inc. v. N.M. Pub. Regulation Comm'n, 392 F.3d 1204, 1207 (10th Cir. 2004). Enforcement and interpretation of interconnection agreements, particularly the sections at issue here, involves questions of federal law. See Verizon Md., Inc. v. Global Naps, Inc., 377 F.3d 355, 363-65 (4th Cir. 2004); ICG Telecom Group, Inc. v. Qwest Corp., 375 F.Supp.2d 1084 (D. Colo. 2005) (finding the reasoning persuasive in Global Naps and concluding that resolution of the case requires interpretation of a section of an interconnection agreement under federal law); Petition of SBC Tex. For Post-Interconnection Dispute Resolution with Tex-Link Commc'ns., Inc., under the FTA Relating to Intercarrier Comp., Ruling on Motion to Dismiss, 2005 WL 2834183, at 7-9 (Tex. P.U.C., Oct. 26, 2005); but see Mich. Bell Tel. Co. v. MCIMetro Access Transmission Svcs., Inc., 323 F.3d 348, 355-56 (6th Cir. 2003) (concluding that state law governs interpretation of an interconnection agreement); Global Naps, Inc. v. Verizon N. England Inc., 332 F. Supp.2d 341 (D. Mass. 2004) (same). Under the well-pleaded complaint rule, the face of Complainants' complaint makes clear then that the alleged breach of contract claims would require the Commission to interpret and enforce Qwest's obligations under federal law and in particular Section 252(i) and consequently to apply 47 U.S.C. § 415 limitations period.

Complainants cannot seriously dispute that the gravamen of their complaint requires interpretation of federal law. The interconnection agreements at issue here exist because of the requirements of the Act, which in turn inform the duties and obligations of both Complainants and Qwest. Assuming their breach of contract claims were even viable, the Commission would

have to consider whether the Act necessitated a showing that Complainants requested to opt into the non-filed interconnection agreements "upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i); 47 CFR § 51.809(b). The Act would also require the Commission to determine whether Complainants could adopt prospective terms for any alleged discount in either the Eschelon or the McLeod agreements, notwithstanding that those agreements terminated years ago and are not prospective in nature. Furthermore, the Commission would have to establish what terms in either of the agreements were legitimately related under the Act and whether the Complainants were willing and able to accept all those terms. In short, Complainants' alleged breach of contract claims would involve substantial issues of federal law. See Global Naps, 377 F.3d at 366 (finding substantial questions of federal law because the agreement was federally mandated, the key disputed provisions incorporated federal law, and the contractual duty was imposed by federal law). Complainants cannot escape the limitations period imposed by Section 415 by attempting to frame their claim as a mere breach of contract.

As discussed above and in the motion to dismiss, Complainants had knowledge of their potential claims more than two years prior to filing this complaint and therefore Section 415 precludes the present action.

C. Complainants Provide No Basis to Disregard Federal Precedent Holding that Section 415 Applies Complainants' State Claims

Although Complainants baldly assert that no precedent exists for a federal statute of limitations to apply to a cause of action under state law, Complainants neglect to acknowledge the cases—including United States Supreme Court precedent—marshaled by Qwest in its motion to dismiss. (See Qwest's Motion to Dismiss, pp. 12-13. (discussing A.J. Phillips Co., v. Grand Trunk W. Railway Co., 236 U.S. 662, 667 (1915), Swarthout v. Mich. Bell Tel. Co., 504 F.2d 748, 748 (6th Cir. 1974), and MFS Int'l, Inc. v. Int'l Telecom Ltd., 50 F. Supp. 2d 517 (E.D.Va.

1999)).) There is little doubt that Congress may implement legislation in the area of telecommunications law that takes precedence over state law. U.S. Const., Art. VI, cl. 2; see e.g., City of Auburn v. Qwest, 260 F.3d 1160, 1175 (9th Cir. 2001) (finding that preemption under 47 U.S.C. § 253(a) was "virtually absolute and its purpose is clear-certain aspects of telecommunications regulation are uniquely the province of the federal government and Congress has narrowly circumscribed the role of state and local governments in this arena.").

Complainants' swipe in footnote 37 is misleading. The two cases and law are not identical. Unlike in Oregon, Washington expressly authorizes its Utilities and Transportation Commission to award reparations in cases before it. See RCW 80.04.240. Washington, however, provides a limited six-month statute of limitations period within which the Commission may hear cases seeking reparations awards. Id. Because the parties in Washington sought to appear before the Washington Utilities and Transportation Commission, as opposed to another forum, Washington law barred the Washington state claims to the extent that the Complainants sought reparations. Qwest's position in Washington therefore does not contradict Qwest's understanding that the federal statute of limitations provides an ultimate two-year bar, regardless of the forum, to claims brought under or arising from the Act.

When Congress implemented the Telecommunications Act and section 415, Congress intended that the limitations period encompass "all complaints against carriers for the recovery of damages." 47 U.S.C. § 415. Congress' purpose was to assure national uniformity in the Act's application. A.J. Phillips Co., 236 U.S. at 667 (noting that its purpose is to prevent suits on delayed claims and that "[t]o have one period of limitation where the complaint is filed before the Commission, and the varying periods of limitation of the different states. . . would be to prefer some and discriminate against others, in violation of the terms of the commerce act"). Complainants' state law claims are intimately tied to the Act, and Complainants have provided no reason to question the soundness of federal and Supreme Court precedent disposing of the

very issue. In short, Complainants cannot escape the conclusion that all their claims are time barred by Section 415.

D. Equitable Tolling Does Not Apply Under Section 415 or Under the Circumstances Alleged by Complainants

1. Equitable Tolling Does Not Apply to a Jurisdictional Limitation such as Section 415

Equitable tolling is not available under Section 415 because Section 415's limitations period is jurisdictional in nature and goes directly to the tribunal's adjudicatory authority. A limitations period is not subject to equitable tolling if it is jurisdictional in nature. Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982); accord Albillo-De Leon v. Gonzales, 410 F.3d 1090, 1095 (9th Cir. 2005). Jurisdictional limitations must be observed even though "a harsh result" may obtain. Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988).

As already described in Qwest's motion to dismiss, the Supreme Court has expressly stated that the "and not after" language in Section 415 means that "the lapse of time not only bars the remedy but destroys the liability." A.J. Phillips Co., v. Grand Trunk W. Railway Co., 236 U.S. 662, 667 (1915) (reviewing the predecessor provision under the Interstate Commerce Act). The Supreme Court has consequently underscored "that the two-year provision of the [predecessor provision of the] act is not a mere statute of limitation, but is jurisdictional,-- is a limit set to the power of the Commission as distinguished from a rule of law for the guidance of it in reaching its conclusion." U.S. ex rel. Louisville Cement Co. v. I.C.C., 246 U.S. 638, 642 (1918); cf. also Miguel v. Country Funding Corp., 309 F.3d 1161, (9th Cir. 2002) (holding that the congressionally-created limitation in the Truth in Lending Act "completely extinguish[ed] the right previously created," thereby depriving the court of jurisdiction). Complainants provide no reason for disregarding this limitation and therefore have no basis for asking the Commission to apply equitable tolling principles here.

2. Complainants Failed to Exercise Diligent Efforts and Failed to Show that Extraordinary Circumstances Prevented Timely Filing

Equitable tolling would nevertheless be unwarranted because Complainants not only neglected to take even cursory measures to protect their rights, but also failed to show that extraordinary circumstances prevented them from timely filing within the limitations period. Espinoza-Matthews v. California, 432 F.3d 1021, 1026 (9th Cir. 2005). Equitable tolling is sparingly allowed. See id. Here, Complainants claim nothing more than that they "had every reason to believe that the Commission would address any potential harm to CLECs from Qwest's failure to file in the context of that docket." (Response, p. 12.) Complainants provide no basis for assuming that those beliefs were reasonable. In fact, those beliefs proved unfounded. Furthermore, Complainants did nothing to protect their rights when nothing prevented them from instituting a separate action or from seeking a stay or a written tolling agreement. Not surprisingly, an argument nearly identical to that advanced by Complainants was rejected by the Supreme Court in Pace v. DiGuglielmo, 125 S.Ct. 1807 (2005), the very case Complainants rely on. The Supreme Court there rejected the petitioner's argument that he detrimentally relied on the erroneous belief that he had to exhaust his state remedies before filing his petition for relief. See id. at 1815. Complainants fail to show that they pursued their rights diligently and they point to no circumstances—other than their own unexcusable ignorance or neglect—that prevented them from filing a timely complaint. See Scholar v. Pac. Bell, 963 F.2d 264, 267-68 (9th Cir. 1992) (stating that ignorance or negligence falls far short of the stringent requirements demanded for equitable tolling to apply). For all of these reasons, Section 415 bars Complainants' complaint.

III. COMPLAINANTS DENY ASSERTING ANY FEDERAL CLAIMS BASED ON SECTIONS 251 AND 252 OF THE ACT AND OTHERWISE FAIL TO CARRY THEIR BURDEN OF ESTABLISHING A PRIVATE RIGHT OF ACTION UNDER SECTIONS 251 OR 252

In their response, Complainants do not address Qwest's argument that Sections 251 and 252 do not provide a private right of action. Complainants assert instead that they "rely[] primarily on state non-discrimination statutes" and maintain that "violation of 252(i) is not the basis of Complainants' claims." (See Response, p. 10.) Complainants do not otherwise address Qwest's arguments and concede that they do not rely on any other provisions of the Act. See id. at 10 n. 36. As discussed, however, Complainants' claims intimately involve federal law. Because Complainants have failed to carry their burden of showing that a federal private right of action exists that allows them to proceed with their claims, the Commission is required to grant Qwest's motion to dismiss. Suter v. Artist M., 503 U.S. 347, 363-64 (1992) (holding that "the burden is on [the proponent of a private right of action] to demonstrate that Congress intended to make a private remedy."); Gonzaga Univ. v. Doe, 536 U.S. 273, 284 (2002) ("[E]ven where a statute is phrased in such explicit rights-creating terms, a plaintiff suing under an implied right of action still must show that the statute manifests an intent 'to create not just a private right but also a private remedy.'"); Opera Plaza Residential Parcel Homeowners Ass'n v. Hoang, 376 F.3d 831, 834-37 (9th Cir. 2004) (finding that plaintiffs' failed to establish a private right of action under either Section 205 or 207 of Title II of the Telecommunications Act of 1996).

Alternatively, given that Complainants acknowledge that they do not assert any federal causes of action under 47 U.S.C. §§ 251 and 252, the issue is moot and therefore the Commission has no more than a hypothetical basis to determine whether Complainants could bring an independent action under Sections 251 or 252. See e.g., Carpenters S. Cal. Admin. Corp. v. J.L.M. Constr. Co., 872 F.2d 930 (9th Cir. 1989) (finding appeal moot because appellant made a motion for voluntary dismissal, signaling its desire to abandon the appeal).

IV. COMPLAINANTS' REQUESTED REFUNDS WOULD VIOLATE THE FILED RATE DOCTRINE

Complainants misstate the filed rate doctrine and its applicability to this case. The doctrine applies not only to Qwest but also to customers and competitive local exchange carriers, such as Complainants. In re Portland Gen. Elec., supra, at *6 ("Rates filed with a commission bind both utilities and customers 'with the force of law.'") (quoting Lowden v. Simonds-Shields-Lonsdale Grain Co., 306 U.S. 516, 520 (1939)). The Ninth Circuit furthermore has made clear that the filed rate doctrine applies in the context of a dispute over an interconnection agreement. See Verizon Del., Inc. v. Covad Commc'ns Co., 377 F.3d 1081, 1082 & 1090 (9th Cir. 2004) (agreeing with the district court that the filed rate doctrine applies in the context of interconnection agreements to prevent the recovery of any charge not specified in the relevant tariff); see also Util Reform Project v. Portland Gen. Elec. Co., supra, at *2 (stating that the filed rate doctrine applies in Oregon—embodied in Oregon law in ORS 757.225—and that the Commission cannot order a utility "to give refunds based on past rates which it lawfully charged under its tariff").

Complainants are therefore clearly wrong when they assert that the filed rate doctrine does not prohibit the Commission from ordering refunds or reparations above and beyond the rates set by the filed agreements. As developed in Qwest's motion to dismiss, to grant the relief that Complainants seek, the Commission would have to take the unprecedented measure of enforcing rates found in an unfiled interconnection agreement and disregard the existing rates found in the filed and approved interconnection agreements between Qwest and Complainants. This would be contrary to Commission and federal precedent, which has continually enforced the filed rate doctrine. See e.g., Util. Reform Project, supra; Covad Commc'ns Co., supra; Goldwasser v. Ameritech Corp., 222 F.3d 390, 402 (7th Cir. 2000) (holding that the filed rate doctrine barred a claim for damages where the filed rates in question were those in filed

interconnection agreements approved under Section 252). Qwest can find no authority to otherwise support a state commission's ability to impose such an extraordinary remedy for the benefit of private parties. The Commission has already sought and imposed penalties. See Order No. 05-783 (June 17, 2006), docket UM 1168. Thus, Complainants' claims are barred by the filed rate doctrine.

CONCLUSION

For the foregoing reasons and for all the reasons detailed in its motion to dismiss, Qwest respectfully submits that Complainants arguments are baseless and therefore this Commission should grant Qwest's motion to dismiss.

Dated this 24th day of February, 2006

Respectfully submitted,

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[Service Date September 19, 2003]

September 19, 2003

NOTICE OF OPPORTUNITY TO RESPOND TO MOTION TO AMEND CAPTION

REQUEST FOR CLARIFICATION OF SERVICE LIST

(By Tuesday, September 30, 2003)

RE: Washington Utilities and Transportation Commission v. Advanced Telecom Group, Inc.
Docket No. UT-033011

TO PARTIES OF RECORD:

On September 18, 2003, Commission Staff filed with the Commission a Motion to Amend Caption in this proceeding. **Responses to Commission Staff's motion must be filed with the Commission by Tuesday, September 30, 2003.**

A list of party representatives was attached to Order No. 01, Prehearing Conference Order, entered on September 10, 2003. The representatives list indicated some representatives to whom the Commission will serve paper copies of notices and orders, as well as an e-mail courtesy copy. The remaining representatives on the list agreed to receive only a courtesy e-mail copy. The Commission's master service list, prepared by the Records Center includes persons not included on the representatives list. Attached to this notice is a revised representatives list (Appendix A), as well as a list of other persons included in the Commission's master service list (Appendix B).

The Commission intends that the master service list used by the Records Center is the same as the representatives list maintained by the Commission's Administrative Law Division. Please review these lists and provide notice to the Commission by **Tuesday**, **September 30, 2003**, identifying whether any person should be deleted from these lists,

and clarifying whether the Commission should serve the person with paper copies or with a courtesy e-mail copy.

Sincerely,

ANN E. RENDAHL
Administrative Law Judge

APPENDIX A

PARTIES REPRESENTATIVES

DOCKET NO. UT-033011 **Updated 9/19/03**

COMPANY	REPRESENTATIVE AND ADDRESS	PHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS
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Eschelon Telecom, Inc.	**JUDITH A. ENDEJAN** **RICHARD J. BUSCH *(E)*** **Graham & Dunn PC** **Pier 70** **2801 Alaskan Way–Suite 300** **Seattle, WA 98121-1128** ***(E-mail only)*** **DENNIS D. AHLERS** **Senior Attorney** **Eschelon Telecom Inc.** **730 Second Avenue South,** **Suite 1200** **Minneapolis, MN 55402-2456**	**206-340-9694** **612-436-6249**	**206-340-9599** **612-436-6349**	**jendejan@grahamdunn.com** **rbusch@grahamdunn.com** **ddahlers@eschelon.com**
Fairpoint Communications Solutions, Inc.	**RICHARD A. FINNIGAN** **SETH BAILEY *(E-mail)*** **Law Office of Richard A. Finnigan** **2405 Evergreen Park Dr. SW,** **Suite B-1** **Olympia, WA 98502**	**360-956-7001** **360-956-7211**	**360-753-6862** **(Same)**	**rickfinn@ywave.com** **sbailey@ywave.com**
Global Crossing Local Services, Inc.	**MARK TRINCHERO** **Davis Wright Tremaine LLP** **Suite 2300 First Interstate Tower** **1300 S.W. Fifth Avenue** **Portland, OR 97201**	**503-778-5318**	**503-778-5299**	**marktrinchero@dwt.com**
Integra TelCom, Inc.	**RICHARD A. FINNIGAN** **SETH BAILEY (*E-mail*)** **Law Office of Richard A. Finnigan** **2405 Evergreen Park Dr. SW,** **Suite B-1** **Olympia, WA 98502**	**360-956-7001** **360-956-7211**	**360-753-6862** **(Same)**	**rickfinn@ywave.com** **sbailey@ywave.com**
McLeodUSA Inc.	**DAVID CONN** **Deputy General Counsel** **McLeodUSA, Inc.** **6400 C Street SW** **Cedar Rapids, IA 52406**	**319-790-7055**	**319-790-7901**	**dconn@mcleodusa.com**

MCI/WorldCom, Inc.	**ARTHUR A. BUTLER** **Ater Wynne LLP** **601 Union Street,** **Suite 5450** **Seattle, WA 98101-2327** ***(E-mail only)*** **MICHEL SINGER NELSON** **WorldCom Inc.** **707 17th Street, Suite 4200** **Denver, CO 80202**	**206-623-4711** **303 390-6106**	**206-467-8406** **303 390-6333**	**aab@aterwynne.com** **michel.singer_nelson@mci.com**
Qwest Corporation	**LISA A. ANDERL** **ADAM SHERR *(E-mail)*** **Qwest Corporation** **1600 7th Avenue,** **Room 3206** **Seattle, WA 98091** ***(E-mail only)*** **TODD LUNDY** **Qwest Corporation** **1801 California Street, Suite 4700** **Denver, CO 80202**	**206-345-1574** **303-896-1446**	**206-343-4040** **303-896-8120**	**Lisa.Anderl@qwest.com** **Asherr@qwest.com** **Todd.lundy@qwest.com**
Qwest Corporation	***(E-mail only)*** **PETER S. SPIVACK** **MARTHA. RUSSO** **Hogan and Hartson** **555 Thirteenth Street, NW** **Washington, DC 20004** ***(E-mail only)*** **CYNTHA MITCHELL** **Hogan and Hartson** **1470 Walnut Street, Suite 200** **Boulder, CO 80302**	**202-637-5600** **720-406-5300**	**202-637-5910**	**psspivack@hhlaw.com** **mlrusso@hhlaw.com** **cmitchell@hhlaw.com**
SBC Telecom	**RICHARD A. FINNIGAN** **SETH BAILEY *(E-mail)*** **Law Office of Richard A. Finnigan** **2405 Evergreen Park Dr. SW,** **Suite B-1** **Olympia, WA 98502**	**360-956-7001** **360-956-7211**	**360-753-6862** **(Same)**	**rickfinn@ywave.com** **sbailey@ywave.com**

Time Warner Telecom of Washington, LLC	**ARTHUR A. BUTLER** **Ater Wynne LLP** **601 Union Street,** **Suite 5450** **Seattle, WA 98101-2327** **(E-mail only)** **BRIAN THOMAS** **Vice President-Regulatory** **Time Warner** **223 Taylor Avenue North** **Seattle, WA 98109-5017**	**206-623-4711** **206-676-8090**	**206-467-8406** **206-676-8001**	**aab@aterwynne.com** **Brian.Thomas@twtelecom.com**
XO Communications, Inc.	**GREG KOPTA** **Davis Wright Tremaine LLP** **2600 Century Square** **1501 Fourth Avenue** **Seattle, WA 98101-1688**	**206-628-7692**	**206-628-7699**	**gregkopta@dwt.com**
Public Counsel	**ROBERT CROMWELL** **Assistant Attorney General** **Public Counsel Section** **900 4th Avenue, Suite 2000** **Seattle, WA 98164-1012**	**202-464-6595**	**206-389-2058**	**RobertC1@atg.wa.gov**
Presiding Administrative Law Judge	**ANN E. RENDAHL** **1300 S Evergreen Park Dr SW** **P.O. Box 47250** **Olympia WA 98504-7250**	**360-664-1144**	**360-664-2654 [ALD fax only – do not use to file]**	**arendahl@wutc.wa.gov**

APPENDIX B

OTHER PARTY REPRESENTATIVES ON MASTER SERVICE LIST

DOCKET NO. UT-033011 **Updated 9/19/03**

COMPANY	REPRESENTATIVE AND ADDRESS	PHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS
Advanced TelCom Group, Inc.	LON E. BLAKE Dir. of Regulatory Affairs Advanced TelCom, Inc. 3723 Fairview Industrial Dr. SE Salem OR 97302	503-316-4452	503-284-5486	lblake@atgi.net
Allegiance Telecom of Washington, Inc.	DAVID STARR Dir., Regulatory Compliance 9201 North Central Expressway Dallas TX 75231	469-259-2068	469-259-9122	David.starr@algx.com
Covad Communications Company	BERNARD CHAO Covad Communications 4250 Burton Drive Santa Clara CA 95054 CHARLES E. WATKINS Senior Counsel Covad Communications Company 1230 Peachtree Street, N.E. FL 19 Atlanta, GA 30309	408-987-1602 404-942-3492	408-987-1605 404-942-3495	bchao@covad.com gwatkins@covad.com
Electric Lightwave, Inc.	LANCE TADE Electric Lightwave, Inc. 4 Triad Center Suite 200 Salt Lake City, UT 84180	801-924-6357	801-924-6363	
Eschelon Telecom, Inc.	CATHERINE MURRAY Manager, Regulatory Affairs Eschelon Telecom of Washington Inc. 730 Second Avenue South, Suite 1200 Minneapolis, MN 55402	612-436-1632	612-436-6816	
Fairpoint Communications Solutions, Inc.	JOHN LAPENTA Director, Regulatory & Carrier Relations 6324 Fairview Rd #4 Charlotte NC 28210-3271			

Global Crossing Local Services, Inc.	**TERESA REFF** **Senior Financial Analyst** **Global Crossing Local Services, Inc.** **Regulatory Affairs** **1080 Pittsford Victor Road** **Pittsford NY 14534**	**585-255-1427**	**585-381-7592**	**Teresa.reff@globalcrossing.com**
Integra TelCom, Inc.	**KAREN JOHNSON** **Corporate Regulatory Attorney** **Integra Telecom of Washington, Inc.** **19545 N.W. VonNeumann Dr.** **Suite 200** **Beaverton, OR 97006**	**503-748-2048**	**503-748-1976**	**Karen.Johnson@integratelecom.com**
McLeodUSA Inc.	**LAURAINE HARDING** **Senior Manager** **McLeodUSA Telecommunications Services, Inc.** **6400 C Street SW** **P.O. Box 3177** **Cedar Rapids, IA 52405-3177**	**319-790-6480**	**319-790-7901**	
MCI/WorldCom, Inc.	**HALEH S. DAVARY** **MCI WorldCom Communications, Inc.** **201 Spear Street - 9th Floor** **San Francisco, CA 94105**	**415-228-1072**	**415-228-1094**	**Haleh.davary@wcom.com**
Qwest Corporation	**MARK S. REYNOLDS** **Senior Director – Policy & Law** **Qwest Corporation** **1600 - 7th Avenue, Room 3206** **Seattle, WA 98091**	**206-345-1568**	**206-346-7289**	**Mark.reynolds3@qwest.com**
SBC Telecom	**JOHN SCHNETTGOECKE** **SBC Telecom, Inc.** **Regulatory / Municipal Affairs** **1010 N. St. Mary's** **Room 13K** **San Antonio TX 78215**	**210-246-8750**	**210-246-8759**	
XO Communications, Inc.	**JODI CAMPBELL** **XO Washington, Inc.** **1111 Sunset Hills Drive** **Reston, VA 20190**	**703-547-2997**	**703-547-2830**	

ATER WYNNE LLP
ATTORNEYS AT LAW

Suite 5450
601 Union Street
Seattle, Washington 98101-2327
206-623-4711
Fax 206-467-8406

JILL DAVENPORT
Email jrd@aterwynne.com

September 16, 2003

VIA US MAIL AND EMAIL

Ms. Carol J. Washburn
Executive Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Re: WUTC Complaint re Unfiled Interconnection Agreements
Docket No. UT-033011

Dear Ms. Washburn:

Pursuant to WAC 480-09-420(4), enclosed for filing in the above-referenced docket are the following original Agreements Concerning Confidential Information:

1. Exhibit A (Attorney Agreement) signed by Arthur A. Butler on behalf of MCI and Time Warner Telecom;

2. Exhibit A (Attorney Agreement) signed by Susan Arellano on behalf of MCI and Time Warner Telecom;

3. Exhibit A (Attorney Agreement) signed by Jill Davenport on behalf of MCI and Time Warner Telecom;

4. Exhibit A (Attorney Agreement) signed by Michel Singer Nelson on behalf of MCI; and

5. Exhibit B (Expert Agreement) signed by Brian Thomas on behalf of Time Warner Telecom.

If you have any questions, please feel free to contact me.

Sincerely,

ATER WYNNE LLP

Jill Davenport
Assistant to Arthur A. Butler

cc: Ann E. Rendahl, ALJ (w/encl.)(via email)
Parties of Record (w/encl.)(per WUTC Order No. 1)

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of September, 2003, served the true and correct original, along with the correct number of copies, of the above-referenced documents upon the WUTC, via the method(s) noted below, properly addressed as follows:

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia, WA 98504-7250

___ Hand Delivered
_X_ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (360) 586-1150
_X_ Email (records@wutc.wa.gov)

I hereby certify that I have this 16th day of September, 2003, served a true and correct copy of the above-referenced documents upon parties of record, via the method(s) noted below, properly addressed as follows:

On Behalf Of AT&T:

Daniel M. Waggoner Esq.
Davis Wright Tremaine LLP
1501 4th Avenue, Suite 2600
Seattle WA 98101-1688
Confidentiality Status: Public

___ Hand Delivered
_X_ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (206) 628-7699
_X_ Email (danwaggoner@dwt.com)

On Behalf Of AT&T:

Mary Steele
Davis Wright Tremaine LLP
1501 4th Avenue, Suite 2600
Seattle WA 98101-1688
Confidentiality Status: Public

___ Hand Delivered
___ U.S. Mail (first-class, postage prepaid)
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___ Facsimile (206) 628-7699
_X_ Email (marysteele@dwt.com)

On Behalf Of AT&T:

Ms. Mary Tribby
AT&T Communications
1875 Lawrence Street
Denver CO 80211
Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (303) 298-6301
_X_ Email (mbtribby@att.com)

On Behalf Of ATG:

Brad E. Mutschelknaus
Kelley Drye & Warren LLP
1200 19th Street NW, Suite 500
Washington DC 20036-2423
Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (202) 955-9792
X Email (bmutschelknaus@kelleydrye.com)

On Behalf Of ATG:

Victor A. Allums
GE Business Productivity Solutions, Inc.
6540 Powers Ferry Road
Atlanta GA 30339
Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (770) 644-7752
X Email (vic.allums@ge.com)

On Behalf Of Covad:

Charles E. Watkins
Covad Communications Company
1230 Peachtree Street NE, 19th Floor
Atlanta GA 30309
Confidentiality Status: Public

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___ Overnight Mail (UPS)
___ Facsimile (404) 942-3495
X Email (gwatkins@covad.com)

On Behalf Of Covad & ATG:

Brooks E. Harlow
Miller Nash LLP
601 Union Street, Suite 4400
Seattle WA 98101-2352
Confidentiality Status: Public

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X Email (brooks.harlow@millernash.com)

On Behalf Of Covad & ATG:

William R. Connors
Miller Nash LLP
601 Union Street, Suite 4400
Seattle WA 98101-2352
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X Email (bill.connors@millernash.com)

On Behalf Of ELI:

Mr. Charles L. Best
Electric Lightwave Inc.
4400 NE 77th Ave
Vancouver WA 98662

Confidentiality Status: Public

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___ Facsimile (360) 816-0999
_X_ Email (charles_best@eli.net)

On Behalf Of Eschelon:

Dennis D. Ahlers
Eschelon Telecom of Washington, Inc.
730 Second Avenue South, Suite 1200
Minneapolis MN 55402-2456

Confidentiality Status: Public

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___ Facsimile (612) 436-6349
_X_ Email (ddahlers@eschelon.com)

On Behalf Of Eschelon:

Judith Endejan
Graham & Dunn, PC
Pier 70
2801 Alaskan Way, Suite 300
Seattle WA 98121-1128

Confidentiality Status: Public

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_X_ U.S. Mail (first-class, postage prepaid)
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_X_ Email (jendejan@grahamdunn.com)

On Behalf Of Eschelon:

Richard J. Busch
Miller Nash LLP
601 Union Street, Suite 4400
Seattle WA 98101-2352

Confidentiality Status: Public

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_X_ Email (rbusch@millernash.com)

On Behalf Of Fairpoint, Integra & SBC:

Richard A. Finnigan
Law Office of Richard A. Finnigan
Suite B-1
2405 Evergreen Park Drive SW
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_X_ Email (rickfinn@yelmtel.com)

On Behalf Of Faripoint, Integra & SBC:

Seth Bailey
Law Office of Richard A. Finnigan
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Olympia WA 98502

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_X_ Email (sbailey@ywave.com)

On Behalf Of Global:

Mark P. Trinchero
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland OR 97201-5682

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_X_ Email (marktrinchero@dwt.com)

On Behalf Of MCI:

Michel Singer-Nelson
WorldCom, Inc.
707 17th Street, Suite 4200
Denver CO 80202-3432

Confidentiality Status: Public

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___ Facsimile (303) 390-6333
_X_ Email (michel.singer_nelson@mci.com)

On Behalf Of McLeodUSA:

Mr. David Conn
McLeodUSA Telecommunications Services, Inc.
6400 C Street SW
Cedar Rapids IA 52406

Confidentiality Status: Public

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_X_ Email (dconn@mcleodusa.com)

On Behalf Of Public Counsel:

Robert W. Cromwell Jr.
Attorney General of Washington
Public Counsel Section
900 Fourth Avenue, Suite 2000, TB-14
Seattle WA 98164-1012

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_X_ Email (RobertC1@atg.wa.gov)

On Behalf Of Qwest:

Adam L. Sherr
Qwest Corporation
1600 7th Avenue, Room 3206
Seattle WA 98091

Confidentiality Status: Public

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_X_ Email (adam.sherr@qwest.com)

On Behalf Of Qwest:

Cynthia Mitchell
Hogan & Hartson L.L.P.
1470 Walnut Street, Suite 200
Boulder CO 80302

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_X_ Email (cmitchell@hhlaw.com)

On Behalf Of Qwest:

Lisa A. Anderl
Qwest Corporation
1600 7th Avenue, Room 3206
Seattle WA 98091

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_X_ Email (lisa.anderl@qwest.com)

On Behalf Of Qwest:

Martha Russo
Hogan & Hartson L.L.P.
555 Thirteenth Street NW
Washington DC 20004

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On Behalf Of Qwest:

Peter S. Spivack
Hogan & Hartson L.L.P.
555 Thirteenth Street NW
Washington DC 20004

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___ Overnight Mail (UPS)
___ Facsimile (202) 637-5910
_X_ Email (psspivack@hhlaw.com)

On Behalf Of Qwest:

Todd Lundy
Qwest Corporation
1801 California Street, Suite 4700
Denver CO 80202

Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (303) 295-7069
_X_ Email (todd.lundy@qwest.com)

On Behalf Of Staff:

Shannon Smith
Attorney General of Washington
Utilities & Transportation Division
1400 S Evergreen Park Drive SW
PO Box 40128
Olympia WA 98504-0128

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___ Overnight Mail (UPS)
___ Facsimile (360) 586-5522
_X_ Email (ssmith@wutc.wa.gov)

On Behalf Of TWTC:

Brian D. Thomas
Time Warner Telecom
223 Taylor Avenue North
Seattle WA 98109-5017

Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (206) 676-8001
_X_ Email (Brian.Thomas@twtelecom.com)

On Behalf Of WUTC:

Ann E. Rendahl ALJ
Washington Utilities and Transportation Commission
1300 S Evergreen Park Drive SW
Olympia WA 98504

Confidentiality Status: Public

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___ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (360) 586-8203
_X_ Email

On Behalf Of XO Communications:

Gregory J. Kopta
Davis Wright Tremaine LLP
1501 4th Avenue, Suite 2600
Seattle WA 98101-1688

Confidentiality Status: Public

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_X_ U.S. Mail (first-class, postage prepaid)
___ Overnight Mail (UPS)
___ Facsimile (206) 628-7699
_X_ Email (gregkopta@dwt.com)

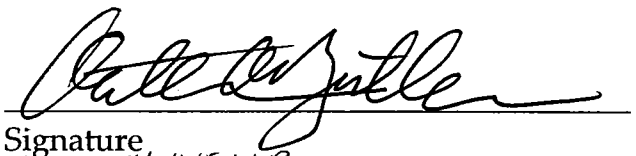
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of September, 2003, at Seattle, Washington.

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-033011
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, ARTHUR A. BUTLER, as attorney in this proceeding for MCI and TIME WARNER TELECOM (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-033011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.



Signature

September 12, 2003
Date

DAVIS WRIGHT TREMAINE LLP
2600 CENTURY SQUARE
1501 4TH AVENUE
SEATTLE WA 98101-1688

Address

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-033011
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, SUSAN ARELLANO, as attorney in this proceeding for MCI + TIME WARNER TELECOM (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-033011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

S. Arellano
Signature

September 12, 2003
Date

PERKINS COIE LLP
601 UNION ST #5150
Seattle WA 98101
Address

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-033011
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, JILL DAVENPORT, as attorney in this proceeding for MCI AND TIME WARNER TELECOM (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-033011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Jill Davenport
Signature

September 12, 2003
Date

AFER WYNNE LLP
601 UNION ST #5450
Seattle, WA 98101-2327
Address

EXHIBIT A (ATTORNEY AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-033011
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, Michael Singer Nelson, as attorney in this proceeding for MCI (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-033011, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature _____ Date 9/11/03

707 17th Street, Denver Co 80202
Address

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING CONFIDENTIAL INFORMATION
IN DOCKET NO. UT-033011
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, BRIAN THOMAS, as expert witness in this proceeding for TIME WARNER TELECOM (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket No. UT-033011 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature — Date: 9/11/2003

TIME WARNER TELECOM
Employer

223 TAYLOR AVE N
SEATTLE, WA 98109
Address

VP - REGULATORY
Position and Responsibilities

* * *

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking exclusion of the expert from access to Confidential Information.

Signature — Date

Qwest Corporation
Law Department
200 South Fifth Street, Room 395
Minneapolis, MN 55402
(612) 672-8905-Phone
(612) 672-8911-Fax

Jason D. Topp
Attorney

ride the light
Qwest

March 13, 2002

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

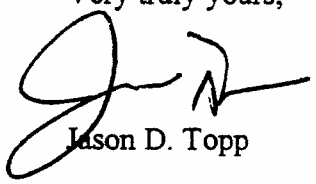
Re: In the Matter of the Complaint of the Minnesota Department of Commerce
Docket No. P-421/C-02-197

Dear Dr. Haar:

Enclosed for filing are the original and fifteen (15) copies of the agreements at issue in this docket (Department of Commerce Complaint Exhibits 1 through 11). Consistent with Qwest Corporation's indication at the March 5, 2002 hearing in the above-referenced docket, Qwest has re-designated these exhibits as Non-Trade Secret.

If you have any questions, or require additional information, please do not hesitate to contact me.

Very truly yours,



Jason D. Topp

JDT/bardm

Enclosures

cc: Service List

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis Reha	Commissioner

In the Matter of the Complaint of the Minnesota Department of Commerce **Docket No. P-421/C-02-197**

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Duane Scherr, being first duly sworn, deposes and says:

That on the 13th day of March, 2002, in the City of Minneapolis, State of Minnesota, he served the annexed filing of Qwest Corporation identified on the filing letter, by either delivery in person, or facsimile or electronic mail followed by mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office in Minneapolis, Minnesota, directed to said addressees at their last known addresses.

Duane Scherr

Subscribed and sworn to before me
this 13th day of March, 2002.

Notary Public

DIANNE M. BARTHEL
Notary Public
Minnesota

P421/C-02-197

In the Matter of the Complaint of the Minnesota Department of Commerce

Service List

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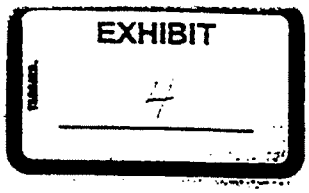

SUBJECT TO RULE OF EVIDENCE 408

CONFIDENTIAL AMENDMENT TO CONFIDENTIAL/TRADE SECRET STIPULATION

This Amendment to the Confidential/Trade Secret Stipulation Between ATI and U S WEST ("Agreement"), is hereby entered into by Qwest Corporation ("Qwest"), formerly known as U S WEST, Inc., and Eschelon Telecom, Inc. ("Eschelon"), formerly known as Advanced Telecommunications, Inc., d/b/a Cady Communications, Inc., Cady Telemanagement, Inc., American Telephone Technology, Inc., Electro-Tel, Inc., and Intellecom, Inc., (hereinafter referred to as the "Parties" when referred to jointly) on this 15th day of November, 2000. This Amendment adds terms to the Confidential/Trade Secret Stipulation Between ATI and U S WEST dated February 28, 2000. The Parties acknowledge the recitals and terms contained in the Confidential/Trade Secret Stipulation Between ATI and U S WEST and seek to resolve differences which existed between the Parties as of that date, and continue as of the date of this Agreement, including differences relating to service quality.

ADDITIONAL RECITALS

1. Disputes have arisen between the Parties as to the effective date of Eschelon's ability to provide services through the unbundled network element ("UNE") platform. Eschelon claims that it was eligible to receive platform rates as of March 1, 2000.

2. Qwest believes that Eschelon was unable to provide services through the unbundled network element platform as of March 1, 2000.

3. In an attempt to finally resolve the issues in dispute and to avoid delay and costly litigation, the Parties voluntarily enter into this Confidential Agreement to resolve all disputes, claims and controversies between the Parties, as of the date of this Confidential Agreement that relate to the matters addressed herein, and Eschelon releases Qwest from any claims regarding the issue as described herein.

CONFIDENTIAL AGREEMENT

1. The Parties enter into this Agreement in consideration for the terms described below, and Eschelon's release of any claims that can or could have been brought against Qwest because Eschelon was providing services through resale of finished services instead of providing service through unbundled network elements. Eschelon claims that it had the right to elect platform prices as of March 1, 2000, while Qwest disagrees with Eschelon's claim, as described above.

2. Eschelon agrees to purchase from Qwest, under this agreement or any other agreement between the parties, at least $15 million (fifteen million dollars) of telecommunication services and products between October 1, 2000 and September 30, 2001. In consideration for Eschelon's agreement to make such purchases and for such other good and valuable consideration set forth in this agreement and documented in Qwest's November 15, 2000 letter, Qwest agrees to pay Eschelon $10 million by no later than November 17, 2000 to resolve all issues, outstanding through the date of execution of this agreement, related to the UNE platform and switched access. Further, Qwest will pay to Eschelon the revenue Qwest billed to IXCs at Qwest's established switched access rates for Eschelon platform end users for usage for the month of October 2000. Qwest will pay this amount to Eschelon within 30 days of the date Qwest receives WTN information for Eschelon for all of October 2000. For any month (or partial month), from November 1, 2000 until the mechanized process is in place, during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access, Qwest will credit Eschelon $13.00 (or pro rata portion thereof) per Platform line per month as long as Eschelon has provided the WTN information to Qwest. After the mechanized process is in place, Eschelon and Qwest will use the established escalation procedures if a dispute arises. Qwest will credit the IXC and other companies for daily usage traffic that Qwest provides to Eschelon to bill to the IXC (to eliminate double billing).

In the event that Eschelon does not purchase, under this agreement or any other agreement, $15,000,000.00 (fifteen million dollars) in telecommunications services and/or products within the time frame set forth above, Eschelon shall, by December 31, 2001, make a pro rata refund of the payment received from Qwest.

3. Eschelon shall provide to Qwest consulting and network-related services, including but not limited to processes and procedures relating to wholesale service quality for local exchange service ("Services"). These Services will address numerous items, including loop cutover and conversion, repair, billing and other items agreed upon by the Parties. The Services may include all lines of business and methods of local market entry used by Eschelon. Eschelon agrees to utilize knowledgeable and experienced personnel for the Services. Eschelon further agrees to assign, upon request, up to two full time representatives dedicated to working with the Qwest account team or other Qwest organizations to facilitate handling of provisioning issues. The Parties agree to meet together (via telephone, live conference, or otherwise) as necessary to facilitate provisioning of the Services. Executives from both companies agree to address and discuss the progress of the Services at quarterly meetings to begin in 2001 and continue through the end of 2005. In consideration of Eschelon's agreement to provide Services and for such good and valuable consideration set forth in this agreement, Qwest agrees to pay

Eschelon an amount that is ten percent (10%) of the aggregate billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005. Eschelon will invoice Qwest annually. Payment is due within 30 days of the invoice date. In the event that the Confidential Purchase Agreement between Eschelon and Qwest (as of the same date as this Agreement) is terminated, this paragraph of this Agreement also terminates simultaneously with termination of that Confidential Purchase Agreement and any payments made pursuant to this paragraph as of the date of termination will be promptly returned to Qwest. In addition, if Eschelon fails to meet its purchase commitments under sections 2, 2.1, 2.2, 2.3, 2.4 or 2.5 of the Confidential Purchase Agreement, Eschelon will promptly return to Qwest any payments made pursuant to this section.

4. If the Parties fail to finalize the Implementation Plan by April 30, 2001, as required by the Parties' Escalation Procedures Agreement, they agree to immediately terminate the Purchase Agreement, the Confidential Billing Settlement Agreement, this Amendment to the Confidential/Trade Secret Stipulation, the Escalation Procedures Agreement, and the Interconnection Agreement Amendment, all dated November 15, 2000, and cooperate in good faith to determine and promptly return to each other all of the economic benefits each received from the other in consequence of those Agreements. Moreover, all of the claims, whether in law or in equity, that either Party released or discharged in those Agreements shall be restored to them.

5. The Parties will address in their quarterly meetings appropriate price adjustments for the telecommunications services and products purchased by Eschelon and Qwest in the preceding quarter.

6. For valuable consideration mentioned above, the receipt and sufficiency of which are hereby acknowledged, Eschelon does hereby release and forever discharge Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liabilities, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the disputes/matters addressed in "Additional Recitals" paragraphs 1 and 2 above, including all disputes related to the UNE platform and switched access.

7. The terms and conditions contained in this Confidential Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates and assigns of the Parties.

8. Eschelon hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claims which is released or discharged by this Confidential Agreement.

9. The Parties agree that they will keep the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Confidential Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Agreement to any person, judicial or administrate agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this Confidential Agreement; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this Confidential Agreement; and (3) apply for confidential treatment of the Confidential Agreement. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Agreement and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

10. In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this Confidential Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this Agreement.

11. This Confidential Agreement constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this Confidential Agreement was the result of a mistake in law or in fact.

12. This Confidential Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota, and shall not be interpreted in favor or against any Party to this Agreement.

13. The Parties have entered into this Confidential Agreement after conferring with legal counsel.

14. In the event that any provision of this Confidential Agreement should be declared to be unenforceable by any administrative agency or court of law, either Party may initiate an arbitration under the provisions of section 14 below within 90 days of such declaration, to determine the impact of such declaration on the remainder of this Confidential Billing Settlement Agreement. The arbitrator shall have the authority to determine the materiality of the provision and any appropriate remedies, including voiding the agreement in its entirety. If neither Party initiates such an arbitration within 90 days, the remainder of the Confidential Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provisions were not part of this Confidential Agreement.

15. Any claim, controversy or dispute between the Parties in connection with this Confidential Agreement shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Minneapolis, Minnesota.. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions, and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Minnesota. The arbitrator shall be selected by the Parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the Parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitratibility of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion award reasonable attorneys' fees and costs in favor of a Party if, in the opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

16. The Parties acknowledge and agree that they have a legitimate billing dispute about the issues described in this Confidential Agreement and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement cannot be used against the other Party, including but not limited to admissions.

17. This Confidential Agreement may be executed in counterparts and by facsimile.

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15th day of November 2000.

Escheion Telecom, Inc.

By: _____

Title: Pres. - CEO

Date: 11/15/00

Qwest Corporation

By: _____

Title: _____

Date: _____

Q110047

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15th day of November 2000.

Eschelon Telecom, Inc.

By: _____

Title: _____

Date: _____

Qwest Corporation

By: _____

Title: EVP

Date: 11.15.00

Approved as to legal form

NOV 15 2000

LAWYERS

Davis Wright Tremaine LLP

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June 28, 2002

HAND DELIVERED

Ms. Cheryl Walker
Administrative Hearings Division
OREGON PUBLIC UTILITY COMMISSION
550 Capitol Street, N.E.
Salem, OR 97310

Re: In the Matter of the Investigation of the Entry of U S WEST Communications, Inc. into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996, UM 823

Dear Ms. Walker:

Enclosed for filing in the above-referenced proceeding are an original and five (5) copies of the "Comments of AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Oregon Regarding Public Interest."

Thank you for your assistance. Please call me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP

Mark P. Trinchero

Mark P. Trinchero

Enclosures
cc: Service List (electronically)

F:\4\47928\64\271\OREGON\UM 823\WALKER.LTR11.DOC
Portland

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of the Investigation of the Entry of Qwest Corporation into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996.	)))))	**UM 823**

COMMENTS OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG OREGON REGARDING PUBLIC INTEREST

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG OREGON

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Attorneys for AT&T

June 28, 2002

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pursuant to the Oregon Public Utility Commission's (the "Commission") June 3, 2002 Workshop IV, Part II Findings and Recommendation Report of the Commission and Procedural Ruling (the "June 3 Order"), AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Oregon (collectively "AT&T") provide the following comments relating to the public interest analysis of Qwest Corporation's ("Qwest") request for a positive recommendation on its application to enter the in-region interLATA services market in Oregon. The AT&T exhibits identified herein are annexed to the Affidavit of Gregory H. Hoffman, dated June 27, 2002 and filed concurrently herewith.

I. INTRODUCTION

In the June 3 Order, this Commission made certain findings of fact and conclusions of law with respect to whether it is in the public interest to permit Qwest to enter the in-region long distance market.[1] AT&T has serious concerns with various aspects of the Commission's ruling. The Commission, however, stated in the June 3 Order that for issues already decided, Workshop V would be limited to, *inter alia*, (1) consideration of any previous Commission decisions that contain errors in legal interpretations and that have a material impact on the Commission's recommendations, (2) changes in federal or Oregon law since the Commission's recommendation was issued or (3) newly discovered facts having a material impact on the Commission's recommendations. Therefore, AT&T will address in this filing only those public interest issues that meet these criteria.[2]

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[1] *See* June 3 Order at 38-46.
[2] *See* June 3 Order at 94.

In the eight months that have passed since AT&T filed its original Public Interest brief in Oregon, little has changed for the better, but much has changed for the worse concerning the public interest portion of Qwest's section 271 application. Qwest continues to wield considerable market power in the local exchange markets in Oregon and Qwest's presentation of its case in the public interest arena still improperly ignores the existence and extent of that market power. Qwest's monopoly over the residential market in Oregon remains unabated.[3] The insufficient wholesale margins that AT&T noted in its initial brief—and which are an important cause for the failure of effective competition to develop here—remain intact.[4] The prospects for the development of UNE-based and facilities-based competition in Oregon remain poor. Qwest has failed to provide adequate assurances that the local market, once open, will remain so in the event Qwest's application for section 271 authority is granted.

Even more troubling are new developments that warrant setting aside Qwest's 271 application pending further investigation. For example, the list of anti-competitive acts by Qwest continues to grow, and now includes specific findings by the

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[3] The Commission has summarily dismissed AT&T's reliance on the *de minimis* market share that competitive local exchange carriers ("CLECs") have in Oregon. *See* June 3 Order at 43. The Commission has misapplied Federal Communications Commission ("FCC") precedent. The Commission quoted the FCC, but ended the quote too soon. *See* June 3 Order at 45. The next sentence reads: "Although evidence of the type cited by commenters [market share] could result from checklist non-compliance or continuing barriers to entry in some circumstances, we have not found this to be the case here." *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York,* 15 FCC Rcd. 3953 ¶ 427 (1999). The FCC was suggesting that low market share *should be considered* if it reflects lack of compliance with the Telecommunications Act of 1996 (the "Act) 47 U.S.C. §§ 251, *et seq.* The low market share AT&T has relied upon may not be a basis in and of itself for denying Qwest's entry into the in-region long distance market, but it is evidence that Qwest has acted in an anticompetitive manner and has retarded local competition.

[4] *See* AT&T's Brief Regarding Public Interest (Confidential Version) at 5-8 (filed in this proceeding on October 18, 2001). The D.C. Circuit Court has held that, even if UNE rates are set at TELRIC, which they are not in Oregon, the FCC should consider potential price squeeze evidence under the public interest standard of Section 271. *Sprint v. FCC*, 274 F.3d 549, 555 (D.C. Cir. 2001). In addition, this Commission has allowed extraordinarily high non-recurring charges ("NRC's") to remain in effect subject to refund for over five years. In fact, the Commission issued an initial Order directing significant NRC reductions in the Fall of 1998. *See* Order No. 98-444 (OPUC Docket UT 138/139, entered November 13, 1998). Yet compliance filings and refunds are still pending in Phase III of that docket, creating a barrier to entry.

staff of the Arizona Corporation Commission and by the Iowa Utilities Board that Qwest has engaged in anticompetitive conduct with respect to its negotiation of secret agreements. In addition, the Minnesota Public Utilities Commission has held that Qwest engaged in bad faith and a pattern of anticompetitive conduct in connection with UNE-P testing requested by AT&T.

The Minnesota decision is particularly germane because at least one of the secret agreements at issue involved "consulting services" which Qwest claims to have received from Eschelon. In other words, while Qwest was resisting AT&T's attempts to obtain UNE-P testing, Qwest was also engaging in secret collaboration with Eschelon, outside the section 271 workshop process. The resulting discriminatory treatment is a clear violation of Qwest's obligations under section 271, and undermines the supposedly open collaborative process which Qwest itself sought and received as part of its efforts to obtain section 271 approval.

Qwest's anticompetitive conduct also is evident in its efforts to impose a local carrier freeze on customers in Oregon and other states. Even before there is an indication that effective competition can develop in the state, Qwest already has taken dramatic and oppressive steps to hinder or halt that development.

Touch America filed a Petition to Intervene and Motion to Reopen Issues here in Oregon to allow the Commission to take additional evidence relating to Touch America's allegations that Qwest has continually violated section 271 since the time the U S WEST/Qwest merger was approved. On June 13, 2002, the Administrative Law Judge denied Touch America's intervention on grounds that, if granted, Touch America's

Petition and Motion would unreasonably broaden the issues.[5] Expansion of the issues, however, when they bear directly on the public interest of allowing Qwest into the interLATA market are exactly what is appropriate.

In addition, Qwest is the subject of a well-publicized investigation by the Securities and Exchange Commission, seeking information on Qwest's accounting practices in connection with a variety of different transactions, including the negotiation of contracts for indefeasible rights of use (IRUs) for fiber optic facilities.[6]

In short, regulators at both the state and federal levels are finally beginning to notice irregularities in Qwest's business practices. More importantly, where those regulators have taken the time to examine and investigate these irregularities—*e.g.*, Arizona, Iowa and Minnesota—they have issued findings of fact that Qwest has engaged in a *pattern* of anticompetitive conduct, bad faith, and willful violation of state and federal law.

Significantly, the conduct discussed herein is *new*. The Commission's dismissal of Qwest's previous bad conduct as too old to be of concern cannot apply to events as recent as these. For the Commission to turn a blind eye to such conduct and reward Qwest with a positive recommendation on its Section 271 application would clearly be contrary to the public interest.

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[5] Ruling, OPUC Docket UM 823, issued June 13, 2002.
[6] *See* "SEC Takes a Hard Line on Qwest," *The Wall Street Journal* at A3 (June 26, 2002) (annexed hereto as Exhibit AT&T 605).

II. DISCUSSION

A. Qwest's Secret Agreements With Certain Carriers Are Anticompetitive And Violate The Law.

On February 14, 2002,[7] the Minnesota Department of Commerce filed a complaint with the Minnesota Public Utilities Commission against Qwest alleging that it had entered into agreements with telecommunications carriers that it had failed to file for approval with the Minnesota Public Utilities Commission pursuant to section 252(e) and, consequently, failed to make available to other carriers pursuant to section 252(i) of the Act.[8] Qwest answered the Complaint, arguing, *inter alia*, that 1) the scope of section 252 filing requirements exceeds the Minnesota Commission's jurisdiction; and 2) if the agreements should have been filed with the Minnesota Commission under section 252 and were not, the agreements are void and unenforceable.[9]

Even from a casual reading of the terms of the Complaint, Qwest's Answer and the agreements, one can easily see that the agreements involve the business relationship between Qwest and a competitive local exchange carrier ("CLEC") related to provision of local exchange

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[7] The decision of the Arizona Commission staff on this issue occurred after this Commission issued the June 3 Order and the Iowa Commission decision on this topic issued just 5 days before the June 3 Order. *Staff Report And Recommendation In The Matter Of Qwest Corporations Compliance With Section 252(e) Of The Telecommunications Act Of 1996*, Arizona Corporation Commission, Docket No RT-00000F-02-0271 at 16 (June 7, 2002) ("*ACC Staff Report*")(annexed hereto as Exhibit AT&T 606); *Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing*, Iowa Utilities Board Docket No. FCU-02-2 (May 29, 2002) ("*Iowa Secret Deals Order*")(annexed hereto as Exhibit AT&T 607). AT&T has raised this issue in Workshop V because there are new material facts – which are still unfolding – that the Commission should consider. Moreover, the Commission's decision that a positive Section 271 recommendation is in the public interest despite having knowledge of these facts through an ongoing investigation by its own staff is legally erroneous. *See* "PUC Trying To Get Line On Qwest's Secret Deals," *The Oregonian* 2002 WL 3952977 (March 28, 2002); "Bad Public Relations Moves May Hurt Qwest," *The Oregonian*, 2002 WL 3958228 (May 9, 2002) (annexed hereto as Exhibit AT&T 608).

[8] *In the Matter of the Complaint of the Minnesota Department of Commerce against Qwest Corporation*, Verified Complaint, Docket No. P-421/DI-01-814 (MN PUC Feb. 14, 2002) ("*Minnesota Complaint Case*") (annexed hereto as Exhibit AT&T 609)

[9] *Minnesota Complaint Case*, Qwest Corporation's Verified Answer to the Complaint of the Minnesota Department of Commerce at 8 ("*Verified Answer*")(annexed hereto as Exhibit AT&T 610).

service by using interconnection, services and network elements provided by Qwest. For example, one of the six Eschelon Telecom, Inc. ("Eschelon") agreements states:

> 3.1 The Parties have agreed that Qwest will calculate local usage charges associated with Unbundled Network Element Platform ("UNE-P") switching on Eschelon's interLATA and intraLATA toll traffic, and Eschelon will pay undisputed amounts within 30 days from Eschelon's receipt of the monthly invoice from Qwest. (See Attachment 3.2, ¶III(B) of the Interconnection Agreement Amendment Terms, Nov. 15, 2000). Qwest will calculate local usage charges in accordance with the procedures set forth on Attachment 3 to this Implementation Plan.[10]

It is obvious that this language concerns the provision of network elements under the terms of an interconnection agreement between Qwest and Eschelon. In its filing in Minnesota, Qwest redacted Attachment 3, arguing the attachment is a trade secret. Other CLECs definitely would have an interest in how Qwest will calculate usage charges for Eschelon and may wish to calculate local usage charges the same way. Failing to file such agreements with state commissions violates federal law and evidences behavior by Qwest that is clearly not in the public interest.

Pursuant to section 252(e) of the Act, all interconnection agreements adopted by negotiation or arbitration shall be submitted to the state commission for approval. Interconnection agreements generally contain the terms for obtaining interconnection, services or network elements pursuant to section 251 of the Act. Although section 251 permits the incumbent local exchange carrier ("ILEC") and another carrier to voluntarily negotiate without regard to the requirements of section 251(b) and

[10] QWEST/ESCHELON IMPLEMENTATION PLAN, signed July 31, 2001. This document was originally part of the *Minnesota Complaint Case* and was confidential. It was subsequently made public as part of the Washington Section 271 proceeding and is annexed hereto as Exhibit AT&T 611. This is only one example; AT&T could provide many others.

(c) , section 252(a) makes it clear that the agreement must be filed with the state commission under subsection (e) .

There are a number of reasons for filing interconnection agreements with the state commission. Section 252(e)(2) provides the reasons a state commission may reject an agreement. Generally, the state commission may reject an agreement if it discriminates against a carrier not a party to the agreement or if it is "not consistent with the public interest, convenience or necessity." 47 U.S.C. § 252(e)(2)(A)(i)-(ii).

There is another reason that the filing of agreements with the state commission is necessary: Section 252(i) of the Act requires the ILEC to make available any interconnection, service or network elements provided under an agreement approved by a state commission to any other requesting party under the same terms and conditions. The Iowa Utilities Board, for example, had no difficulty establishing and applying a simple, complete, and practical standard for filing such agreements:

> For purposes of this proceeding, the phrase "interconnection agreement" as used in 47 U.S.C. §§251(c) and 252(a) through (i) and 199 IAC 38.7(4) should be defined to include, at a minimum, a negotiated or arbitrated contractual arrangement between an ILEC and a CLEC that is binding; relates to interconnection, services, or network elements, pursuant to §251, or defines or affects the prospective interconnection relationship between two LECs. This definition includes any agreement modifying or amending any part of an existing interconnection agreement.[11]

Similarly, the staff of the Arizona Corporation Commission found that:

> Staff believes Qwest's argument regarding the impact upon competition fails to recognize the obvious. The Commission cannot determine the nature of, and CLECs cannot pick and choose terms, that are kept secret. Qwest states that if a CLEC is denied a like term they request, the CLEC can arbitrate to get it. The obvious question is, if the agreement is secret how will the CLEC realize the term is available and request it in the first place? Qwest

[11] *Iowa Secret Deals Order* at 19-20 (Exhibit AT&T 607).

> says that if an agreement turns out to be discriminatory the Commission can address it after the fact. The obvious question is, if the discriminatory agreement is secret, how will the Commission ever know to address it? Qwest has provided no answers to the conundrums it creates with its position. In addition, another obvious question remains unanswered, why must one carrier be forced to undergo a lengthy and costly arbitration proceeding when another carrier has been able to simply obtain the concession through negotiation. Staff believes that this is exactly the type of discrimination that the Act seeks to prevent.[12]

The FCC has stated that:

> Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anti-competitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.[13]

As the FCC noted, the very success of the Act depends on BOC compliance; however, that compliance is absent here. The negotiation and implementation of these special agreements, in secret and away from the eyes of competitors and regulators alike, not only undermines the potential for the Act to be successful, but also undermines the authority of this Commission, and the integrity of the record in this case. It is clear that Qwest has an obligation to file certain agreements, there is evidence that it has failed and refused to do so and competitors have been harmed. By failing and refusing to file these agreements and seek approval for them,

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[12] *ACC Staff Report* at 16 (Exhibit AT&T 606).

[13] *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd. 20543 ¶ 397 (1997).

Qwest has denigrated the authority of the Commission and undermined the Commission's ability to properly regulate a monopoly carrier in accordance with the public interest.

Qwest has argued that section 252(a)(1) limits the applicability of the filing and approval requirements of section 252. Qwest asserts that the fact that section 252(a)(1) requires inclusion of a detailed schedule of charges for interconnection and each service or network element means that any agreement which does not contain such a detailed schedule is not subject to the filing and approval requirements. Such a strained interpretation would eviscerate the nondiscrimination requirements of the remainder of section 252, and lead to a situation in which an ILEC could discriminate against individual CLECs with impunity. Such a result would be clearly contrary to the letter and spirit of the Act.

Interconnection agreements contain much more than prices. Indeed these agreements typically go on for hundreds of pages, and the bulk of these agreements relates not to pricing but to terms and conditions, each of which has been the subject of painstaking negotiations, review, and argument. Allowing only a narrow reading of section 252 will result in a myriad of discriminatory amendments to these agreements, and will license preferential treatment of some CLECs by Qwest with respect to the terms and conditions of interconnection.

The language of section 252(a)(1) must be read in context. Where interconnection agreements can be arrived at through voluntary negotiations, then certainly the Act prefers that approach. But the Act still imposes the filing and approval

requirements on voluntary agreements, just as it does arbitrated agreements.[14] Section 252(e) requires that "any" interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. Furthermore, the grounds for rejection of an interconnection agreement are clear: such an agreement must be rejected, *inter alia*, if the agreement *or any portion thereof* discriminates against a telecommunications carrier not a party to the agreement.

The nondiscrimination requirements of section 252(e) are an integral part of the approval requirements of that same section, as well as the filing requirement of section 252(h). In turn, these nondiscrimination requirements are implemented and enforced by way of the "pick and choose" requirement found in section 252(i) of the Act. Each of these nondiscrimination protections is as applicable to terms and conditions as it is to price.

The language of the Act, when read in its entirety and unencumbered by Qwest's selective myopia, calls for a broad interpretation of what agreements are subject to state commission approval, filing, and "pick and choose." Not only should "any" interconnection agreement be filed with the state commission, but the commission may reject it if even a *portion* of the agreement is found to be discriminatory. Additionally, when asked about the applicability of the filing, approval, and nondiscrimination requirements of section 252, the FCC clearly chose to use an expansive interpretation of

[14] It should be noted that Qwest has forced AT&T to arbitrate each and every one of the interconnection agreements it has with AT&T. In this context, any expectations that Qwest will be cooperative or "customer focused" with respect to its wholesale, CLEC customers are misplaced. Indeed, Qwest's track record demonstrates a determination on the part of the company to resist new entrants at every turn, and in every way imaginable manner. The Texas Commission was aware that this same corporate attitude was present in SBC, and demanded that SBC take specific actions to eradicate that corporate attitude in advance of any grant of 271 authority. *See Texas Commission Order No. 25 in Project No. 16251* (June 1, 1998) (annexed hereto as Exhibit AT&T 612). This Commission should do likewise.

which agreements should be subject to those requirements.[15] Qwest's strained interpretation of section 252(a)(1) should be summarily rejected.

If Qwest and a CLEC can define a term or condition of an agreement as being "beyond the detail that must be filed and approved under Section 252,"[16] then it and the CLEC can negotiate terms that benefit a particular CLEC.[17] What Qwest ignores is that every term or condition related to the provision of interconnection, services or network elements has an economic cost to a carrier, whether positive or negative. If a CLEC can negotiate different secret terms or conditions, the CLEC can change its costs without other CLECs' knowledge or benefit. Discrimination cannot be avoided, even if it is unintentional.

It is AT&T's understanding that Qwest has cooperated with Commission staff in its investigation of these secret deals.[18] Any materials provided as part of the investigation should be made a part of this proceeding and made available for parties to review. Only through such action can this Commission fulfill its mandate under the Act to reject an agreement it believes is not in the public interest. Moreover, it is in the public interest generally to ascertain whether Qwest is in fact filing the necessary agreements with the Commission for approval and if any CLECs received or are receiving preferential treatment. Otherwise, the Commission's statutory obligation, as well as the policy goals inherent in the Act, are nullified.

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[15] See for example *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd. 15499, ¶¶ 165-7 (1996) ("Local Competition Order").

[16] *Verified Answer*, at 6 (Exhibit AT&T 610). By calling the Eschelon agreement an implementation plan regarding "business-to-business administrative procedure," Qwest argues it falls outside the scope of section 252. *Id.* at 4.

[17] Qwest has argued that there are other categories of agreements that fall outside of section 252. However, Qwest's argument lacks legal merit. If the agreement with a carrier affects the provision of interconnection, services and network elements under section 251, it should be filed.

[18] *See* "PUC Trying To Get Line On Qwest's Secret Deals," *The Oregonian* 2002 WL 3952977 (March 28, 2002); "Bad Public Relations Moves May Hurt Qwest," *The Oregonian*, 2002 WL 3958228 (May 9, 2002) (Exhibit AT&T 608).

AT&T's review of certain portions of some agreements reveals that each of them directly reflects upon Qwest's unwillingness and inability to provide interconnection to CLECs on a nondiscriminatory basis.[19] More specifically, AT&T finds the following terms and conditions, while not by any means an exhaustive list, to be among the best examples of preferential treatment of some CLECs by Qwest:

> *a) Qwest offered Eschelon a dedicated on-site provisioning team, while offering AT&T only a single individual representative, with off-site presence, multiple additional responsibilities, and limited availability.*
>
> *b) Qwest also offered Eschelon the opportunity to "consult" with Qwest in exchange for a ten percent reduction in "aggregate billed charges for all purchases made by Eschelon from Qwest," while at the same time denying AT&T's request for UNE-P testing accommodation in Minnesota.*
>
> *c) Qwest provided Eschelon a $13.00 per-line per-month credit (which it later increased to $16.00) ostensibly as compensation for Qwest's failure to provide accurate recording of access minutes through its daily usage files ("DUF"), while AT&T and other carriers struggled in vain to obtain accurate recording in order to properly bill access usage.*[20]
>
> *d) Qwest provided a similar $2.00 per-line per-month credit to Eschelon for intraLATA toll traffic terminating to Eschelon's switch, where Qwest knowingly provided inaccurate access records to Eschelon for this type of traffic, while forcing other carriers to negotiate each such instance from the ground up.*
>
> *e) Qwest agreed to provide Covad with more favorable service interval terms than any other carrier, including AT&T.*

In each of these instances, Qwest provided important and useful interconnection services to one CLEC without making the same services available to

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[19] *See* samples of secret agreements, annexed hereto as Exhibits AT&T 611 and AT&T 613 to AT&T 615. These are part of Exhibit 1635-C from the record of the Washington Section 271 proceeding. Although originally confidential, these documents are now part of the public record.

[20] AT&T is informed, and believes, that Eschelon disputes Qwest's characterization of this payment, and maintains instead that the additional $3.00 payment per line is compensation for poor service quality. *See infra* n.20.

others. Thus it is clear that Qwest has engaged in discrimination and preferential treatment of one group of CLECs over another. What remains unclear is the extent to which other acts of discrimination have occurred. Without a thorough investigation into these agreements, any Commission decision on Qwest's application for Section 271 authority will be based on an incomplete record. The question of whether these proceedings have been tainted by Qwest's misrepresentations is of vital importance to maintaining the Commission's integrity and a proper respect for the truth. Therefore, this Commission should exercise its independent authority to investigate these allegations before arriving at any conclusion on Qwest's application for 271 authority.

B. Through Certain Provisions Of The Secret Agreements, Qwest May Have Tainted The Record In This Proceeding.

In at least one instance, Qwest bargained for and received a promise from one of its competitors—Eschelon—to be silent and refrain from opposing Qwest's 271 application in all fourteen states.[21] By giving preferential treatment to one of its competitors, Qwest not only discriminated against its other competitors, but silenced an important critic in the very proceedings intended to open the local market to all competitors. Recently, on June 7, 2002, the staff of the Arizona Corporation Commission issued a Memorandum with its findings on the Qwest secret agreements. In its Memorandum it indicated that the impact of the secret agreements on the record in the Section 271 matter should be addressed in the 271 docket – suggesting that at least some investigation of any such effect should be conducted.[22] Moreover, Arizona Corporation Commissioner Marc Spitzer made an open request to all parties in the Qwest Arizona 271

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[21] *See* Letter from Eschelon to Joseph Nacchio of Qwest, dated February 8, 2002 (annexed hereto as Exhibit AT&T 616).
[22] *ACC Staff Report* at 16 (Exhibit AT&T 606).

docket to address "grave concerns" about a prohibition on a party participating in governmental deliberations and whether the 271 proceeding should be stayed in light of the Arizona Staff's June 7 Report.[23] AT&T has responded to Commissioner Spitzer's letter requesting, *inter alia*, that the Section 271 proceeding in Arizona not be suspended, but reopened and expanded to review these serious issues.[24]

It is not difficult to see how silencing carriers that have direct experience with Qwest as a wholesale provider of local services could have altered the record in this proceeding. For example, silencing CLECs could have led this Commission to believe that only AT&T and other long distance carriers had objections to Qwest's application and that the long distance carriers' motive was simply to keep Qwest out of the long distance market. In fact, local exchange carriers might have had objections but were silenced. Any suggestions by Qwest that small CLECs had no complaints, as evidenced by their lack of participation in the Section 271 proceeding, was, in at least one instance that we know of, inaccurate. By keeping the agreements secret, no evidence was available to contradict Qwest's assertions. Yet another example of how not filing the agreements likely impacted the record is that the nature and extent of the problems CLECs encountered were kept out of the 271 record and the public eye. Moreover, favorable treatment provided to certain CLECs may have affected individual CLEC performance for the better, resulting in an inaccurate picture of actual CLEC performance data and affecting overall conclusions in the operations support system ("OSS") test because of the reliance on commercial data by the Test Administrator to make findings of

[23] *See* Letter from Commissioner Marc Spitzer (June 17, 2002) (annexed hereto as Exhibit AT&T 617).
[24] *See* Letter from Richard S. Wolters to Commissioner Marc Spitzer at 3 (not on letterhead) (June 25, 2002) (annexed hereto as Exhibit AT&T 618).

parity. In addition, the data reconciliation audit conducted by The Liberty Consulting Group may have been less extensive because of the lack of full CLEC participation.[25]

Out of concern that the secret deals may have affected the data on which state Commissions drew conclusions about Qwest's OSS, AT&T requested that KPMG Consulting perform additional analysis to the extent that KPMG Consulting had relied on data from carriers that had unfiled secret agreements with Qwest and how those agreements could have affected KPMG Consulting's Final OSS Report. The request was denied after KPMG brought the issue to the Regional Oversight Committee's Steering Committee. On June 26, 2002, AT&T filed a request that the Steering Committee reconsider the decision not to perform further analysis because (a) state Commissions might not conduct investigations into the impact the unfiled agreements had on the OSS test and (b) only KPMG Consulting could possibly know of the full impact that these unfiled secret agreements may have had.[26] Should the Steering Committee decide not to pursue additional analysis, it will be even more critical that this Commission investigate the secret agreements.

Regardless of the Steering Committee's decision, all of the aforementioned reasons are evidence that the integrity and completeness of the record in this case have been compromised. Qwest's actions have actively precluded the Commission from hearing evidence from a potential witness or group of witnesses. In this context, it is important—and rather easy—to distinguish between agreements which are subject to the filing requirements of sections 251 and 252, and those that are not. For

[25] AT&T addressed these issues in greater detail in its June 26, 2002 filing with Arizona Corporation Commission (unexecuted version), annexed hereto as Exhibit AT&T 619.
[26] *See AT&T Appeal Of Steering Committee Decision* (June 26, 2002) (annexed hereto as Exhibit AT&T 620).

example, the agreement between AT&T and U S WEST regarding the merger of U S West and Qwest has absolutely nothing to do with interconnection. Quite simply, AT&T agreed not to oppose the merger of U S WEST and Qwest, and U S WEST/Qwest agreed not to advocate the imposition of forced access upon AT&T's cable properties. There is nothing in that agreement which remotely concerns interconnection, or which would at all invoke the filing and approval requirements of sections 251 and 252. In addition, the agreement between AT&T and U S WEST took place in proceedings which were clearly adversarial in nature, settling a controversy between two opponents, whereas the agreements at issue here took place in circumvention of what had been intended to be an open, collaborative process; indeed a collaborative process which Qwest itself asked for, received, and then undermined.

Under these circumstances, the entire 271 process has been compromised. Moreover, the existence of these secret agreements renders Qwest's 271 application contrary to the public interest for several reasons. First, these agreements are discriminatory and therefore demonstrate that Qwest's local markets are not opened. Qwest is acting as a gatekeeper for its local markets, giving preferences to some and withholding important information and benefits from others. Second, these agreements are evidence that Qwest has violated state and federal law. As noted previously, the FCC has specifically stated that violations of state and federal law by an applicant are relevant to whether a grant of 271 authority is in the public interest. Clearly in this case, approval of Qwest's 271 application is not in the public interest. Third, the negotiation of at least one of these agreements was contrary to, and undermined, the collaborative process which Qwest itself sought for the examination of its 271 application. Qwest has failed

and refused to play by its own rules and should not be rewarded for that anticompetitive behavior.

C. Qwest's Misconduct Related To UNE-P Testing In Minnesota Further Establishes That It Is Not In The Public Interest To Allow Qwest To Enter The Long Distance Market.

As this Commission already is aware, on March 21, 2001, AT&T filed a complaint against Qwest with the Minnesota Public Utilities Commission ("MPUC") regarding Qwest's violation of its interconnection agreement with AT&T as well as violations of state and federal law.[27] Previously, in mid-September 2000, AT&T had informed Qwest of AT&T's desire and intention to test unbundled network element platform ("UNE-P") ordering and provisioning in Minneapolis. Despite months of meetings between the parties, frustrated and prolonged by Qwest's ever-changing requirements of AT&T, Qwest at the eleventh hour flatly refused to conduct the test trial. Consequently, AT&T had no option but to file a complaint with the MPUC. On April 30, 2001, the MPUC issued an Order granting AT&T temporary relief requiring Qwest to complete certification and bill-conductivity testing.[28]

Subsequently, on February 22, 2002, the administrative law judge in the case handed down a recommended decision containing a detailed discussion of the facts of the case, and concluding that:

> Qwest committed a knowing, intentional, and material violation of its obligation to engage in cooperative testing under §14.1 of the

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[27] AT&T filed a Statement of Supplemental Authority and a Reply Statement on March 11, 2002 and April 3, 2002, respectively concerning this issue. The Commission, however, did not address this in its Public Interest discussion in the June 3 Order. Moreover, the decision of the Arizona Commission staff occurred after this Commission issued the June 3 Order and the Iowa Commission decision issued just 5 days before the June 3 Order. Therefore, AT&T has raised this issue in Workshop V both because there are new material facts the Commission should consider and because the Commission's failure to decide that a positive Section 271 recommendation is in the public interest despite these facts is legally erroneous.

[28] *Order Granting Temporary Relief and Notice and Order for Hearing*, Minnesota Public Utilities Commission, Docket No. P-421/C-01-391 (April 30, 2001)(annexed hereto as Exhibit AT&T 621).

> Interconnection Agreement by its refusal to conduct AT&T's UNE-P test from September 14, 2000, to May 11, 2001. Such action also constitutes a knowing and intentional refusal to provide a service, product, or facility to a telecommunications carrier in accordance with a contract under Minn. Stat. §237.121(a)(4). Qwest is therefore subject to penalties under Minn. State. §237.462, subd. 1, (1) and (3).
>
> Qwest failed to act in good faith and committed knowing, intentional, and material violations of its obligations to act in good faith under the Interconnection Agreement and under Section 251(c)(1) of the Act by the following conduct:
>
> a) Creating a specious position to support its refusal to conduct AT&T's UNE-P test, when that refusal was actually based upon what Qwest saw as an assault against its 271 initiative and by its desire to prevent or delay AT&T from conducting a true market entry test—both pure retail business interests of Qwest.
>
> b) Imposing its position regarding its testing obligations upon AT&T, whether specious or correct, without informing AT&T, by delaying AT&T's opportunity to challenge that position, by concealing its true intent to allow only certification testing, and by attempting to avoid and by delaying the UNE-P test by engaging AT&T in long and unnecessarily difficult negotiations over UNE-P testing that Qwest never intended to allow. These deceptions continued from September 14, 2000, until April 6, 2001, when Qwest filed its Answer and counterclaim declaring openly for the first time that it would not do the UNE-P test unless AT&T demonstrated to its satisfaction that it had legitimate business plans to enter the market.
>
> c) Sending the letter of August 29, 2001, to AT&T making false and misleading statements.
>
> Such actions also constitute knowing and intentional failure to disclose necessary information under Minn. Stat. §237.121(a)(1). Qwest is therefore subject to penalties under Minn. Stat. §237.462, subd. 1, (1), (3) and (4).[29]

The recommended decision goes on to emphasize that Qwest's violations were continuous and on-going. The ALJ also found that the violations were knowing and

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[29] *Findings of Fact, Conclusions of Law and Recommendation, Minnesota Public Utilities Commission*, Docket No. P-421/C-01-391 at 33 (February 22, 2002)(annexed hereto as Exhibit AT&T Ex. 622).

intentional, and are characterized as "a continuing pattern of conduct." Beyond this, however, the ALJ also found that, during the course of the proceedings on the complaint, Qwest deliberately fabricated evidence in an attempt to assert that AT&T did not intend to enter the local exchange market in Minnesota.[30] On April 9, 2002, the full Commission concurred with the ALJ's findings that Qwest engaged in anti-competitive behavior.

Although this Commission's June 3 Order does not address this issue, these facts not only demonstrate an on-going pattern of anticompetitive behavior on the part of Qwest, they also show a willingness and ability on Qwest's part to prevaricate at the highest levels of the company, and thereby to subvert the ability of a regulatory body to determine the true facts. Qwest's behavior here has been shown to be deceitful and it demonstrates a complete lack of respect for regulatory authority.

Qwest has asserted that the solution to this UNE-P testing controversy is the implementation of certain SGAT language, as follows:

> 12.2.9.8 In addition to the testing set forth in other sections of Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, CLEC shall be entitled to employ, at its choice, the dispute resolution procedures of this agreement or expedited resolution through request to the state Commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is *reasonably necessary to accommodate identified business plans or operations needs* counting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for *the costs of such testing*. Absent a finding that the test scope and activities address issues of *common*

[30] *Id.* at 30.

> *interest to the CLEC community*, the cost shall be assigned to the CLEC requesting the test procedures.[31]

However, this language would require AT&T and other CLECs to share their business plans with their most powerful, ubiquitous competitor. The very idea that Qwest would require a new entrant to share its business plan with Qwest in order to obtain requisite testing of facilities is on its face unfair and reflects the anticompetitive corporate attitude which permeates Qwest's ranks.

In addition, as the SGAT language proffered by Qwest makes clear, the CLEC is responsible for the costs associated with the tests—a condition to which AT&T has never objected. However, when coupled with the notion that the CLEC must also share its business plan, Qwest's SGAT language is clearly not a genuine solution to the problem at hand. Qwest should not be allowed to act as the gatekeeper determining who may compete in the local market and who may not. Yet, the SGAT language offered by Qwest in this regard firmly establishes Qwest in that role. To grant Qwest's section 271 application without first addressing and eliminating this difficulty is not in the public interest.

D. Qwest's Possible Violations Of Section 271.

Qwest was required to divest its in-region long distance business in order to merge with U S WEST. Touch America is the company that purchased Qwest's in-region long distance business. Touch America has been forced to file two FCC complaints against Qwest as well as a federal lawsuit. One of the FCC complaints asserts that Qwest has in effect reneged on many aspects of the in-region long distance

[31] This is language taken from Qwest's April 5, 2002 SGAT filing before the Washington Utilities and Transportation Commission. In the Washington SGAT the language is stricken through with a footnote notation stating "This change reflects post-workshop consensus language agreed upon by Qwest, WorldCom and AT&T."

divestiture. The complaints filed in federal court and at the FCC against Qwest are directly relevant to these 271 proceedings, because they assert *inter alia* violations of section 271. According to those complaints, Qwest continues to market and provide in-region interLATA services through its "Q-Wave" service, which provides inter-LATA capable dark fiber facilities.[32] In addition, the TouchAmerica complaints are highly unusual because they relate to allegations of a violation of section 271 by a company seeking 271 authority.

The Commission should consider evidence about these allegations before making any decision relative to Qwest's section 271 application. In view of the collaborative nature of the 271 process, it is difficult to see how the inclusion of such evidence would prejudice any party. In fact, in the interests of developing a full and complete record here, it would appear imperative to allow for the presentation of this evidence. As previously noted, the FCC has specifically held that:

> [E]vidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.[33]

AT&T would urge this commission to allow for the inclusion of such evidence as part of these section 271 proceedings. In the alternative, AT&T recommends the Commission grant Touch America's request for an order staying these proceedings pending resolution of Touch America's complaint at the FCC.

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[32] *See Touch America, Inc. v. Qwest Communications International, Inc.*, Cause No. CV 01 148 M-DWM, U.S. District Court, District of Montana, Missoula Division (J. Molloy), filed August 22, 2001.

[33] *In the Matter of the Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd. 20543 ¶ 397 (1997).

E. Local Service Freezes.

On March 29, 2002, AT&T filed a complaint with the Washington Utilities and Transportation Commission about Qwest's practice of adding local freezes to Qwest local service accounts.[34] This problem came to AT&T's attention when customers were unable to switch to AT&T Broadband local service due to freezes on their accounts—freezes which the majority of customers assert they never authorized. When AT&T tried to place orders in the system to have customers' numbers ported, the system rejected them. AT&T was then informed that freezes were in place on the customers' accounts. When customers tried to lift freezes, confusion and delay ensued. Again, Qwest has been successful in undermining local competition. This Commission should require Qwest to prove that it has not engaged in similar conduct in Oregon.

F. Qwest's Anticompetitive Corporate Attitude.

In addition to anti-competitive behavior, an anti-competitive attitude pervades the ranks, from top to bottom at Qwest. In an e-mail distributed to approximately 190 Qwest employees following the bankruptcy of Covad, Qwest characterized the situation as "Third batter down. End of the national DLEC game." Covad's management, according to Qwest's e-mail is "delusional," as the result of "too much Kool-Aid."[35]

Aside from its language and content, the most striking thing about this e-mail is the sheer number of addressees. Having been addressed to nearly two hundred individuals, it cannot be seen as an independent item sent without the sanction and

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[34] WUTC Docket UT-020388.

[35] *See* E-mail from Li Broberg of Qwest (August 7, 2001)(annexed here to as Exhibit AT&T 623). This same e-mail was included in Covad's closing brief of August 22, 2001, in Colorado Public Utilities Commission Docket No. 98I-178T. It was also discussed by representatives of Covad and Qwest before the Arizona Corporation Commission in a Special Open Meeting on August 23, 2001. A transcript of the pertinent portions of that Special Open Meeting is annexed hereto as Exhibit AT&T 624.

approval of management. One must conclude, on the contrary, that it was a common practice for this individual to send out this specific type of e-mail in a broadcast and that the editorial comments were part of an accepted, if not encouraged, pattern of behavior.

Furthermore, the exuberance contained in this e-mail reflects more than just glee at the failure of Qwest's former rival; it also reveals the existence—indeed the success—of a deliberate strategy, implemented by a large number of employees. The length of the distribution list here alone demonstrates a pervasive, thorough participation in that strategy within Qwest's organization.

For purposes of this public interest analysis, the critical element demonstrated here is that Qwest does not really consider its CLEC-customer business to be at all important. As a result, Qwest does not provide the same level of service to its wholesale customers that it provides to its retail customers. The net effect of that anti-competitive and discriminatory behavior is that retail customers are unable to reap the competitive benefits envisioned by Congress and this Commission. As previously indicated, the Texas Commission saw this same anticompetitive corporate attitude present in SBC, and took specific steps to eliminate it.[36] AT&T recommends that this Commission take similar steps, in advance of any grant of 271 authority to Qwest.

[36] *See* footnote 13, supra.

III. CONCLUSION

For the foregoing reasons, this Commission should not recommend approval of the Qwest's Oregon Section 271 Application until it has investigated and resolved the public interest issues raised herein.

Respectfully submitted this 28th day of June 2002.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG OREGON

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

In the Matter of the Investigation of the Entryof Qwest Corporation into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996.	CASE NO. UM 823 AFFIDAVIT OF GREGORY H. HOFFMAN IN SUPPORT OF THE COMMENTS OF AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG OREGON REGARDING PUBLIC INTEREST

STATE OF CALIFORNIA)
) ss.
County of SAN FRANCISCO)

I, Gregory H. Hoffman, being first duly sworn, hereby state:

1. I am a Senior Attorney with AT&T Corp.

2. I file this Affidavit solely to place before the Public Utility Commission Of Oregon the following documents that are true and correct copies to the best of knowledge:

AT&T 605: "SEC Takes a Hard Line on Qwest," *The Wall Street Journal* at A3 (June 26, 2002).

AT&T 606: *Staff Report And Recommendation In The Matter Of Qwest Corporations Compliance With Section 252(e) Of The Telecommunications Act Of 1996*, Arizona Corporation Commission, Docket No RT-00000F-02-0271 (June 7, 2002).

AT&T 607: *Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing*, Iowa Utilities Board Docket No. FCU-02-2 (May 29, 2002).

AT&T 608: *The Oregonian* 2002 WL 3952977 (March 28, 2002); "Bad Public Relations Moves May Hurt Qwest," *The Oregonian*, 2002 WL 3958228 (May 9, 2002).

AT&T 609: *In the Matter of the Complaint of the Minnesota Department of Commerce against Qwest Corporation*, Verified Complaint, Docket No. P-421/DI-01-814 (MN PUC Feb. 14, 2002).

AT&T 610: *Minnesota Complaint Case*, Qwest Corporation's Verified Answer to the Complaint of the Minnesota Department of Commerce.

AT&T 611: QWEST/ESCHELON IMPLEMENTATION PLAN, signed July 31, 2001.

AT&T 612: *Texas Commission Order No. 25 in Project No. 16251* (June 1, 1998).

AT&T 613: Excerpts from Exhibit 1635-C from the record of the Washington Section 271 proceeding.

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AT&T 616: Letter from Eschelon to Joseph Nacchio of Qwest, dated February 8, 2002.

AT&T 617: Letter from Commissioner Marc Spitzer (June 17, 2002).

AT&T 618: Letter from Richard S. Wolters to Commissioner Marc Spitzer at 3 (not on letterhead) (June 25, 2002).

AT&T 619: AT&T June 26, 2002 filing with the Arizona Corporation Commission (unexecuted version).

AT&T 620: *AT&T Appeal Of Steering Committee Decision* (June 26, 2002).

AT&T 621: *Order Granting Temporary Relief and Notice and Order for Hearing*, Minnesota Public Utilities Commission, Docket No. P-421/C-01-391 (April 30, 2001).

AT&T 622: *Findings of Fact, Conclusions of Law and Recommendation, Minnesota Public Utilities Commission*, Docket No. P-421/C-01-391 (February 22, 2002).

AT&T 623: E-mail from Li Broberg of Qwest (August 7, 2001).

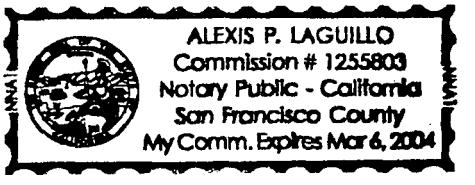
AT&T 624: Transcript of Special Open Meeting before Arizona Corporation Commission.

Dated: June 27, 2002

Gregory H. Hoffman

SUBSCRIBED AND SWORN to before me this 27th day of June 2002.

Notary Public for California
My Commission Expires:



CERTIFICATE OF SERVICE

I certify that the original and five copies of **Comments of AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on Behalf of TCG Oregon Regarding Public Interest,** in Docket No. UM 823, were hand delivered on June 28, 2002 to:

Ms. Cheryl Walker
Administrative Hearings Division
Oregon Public Utility Commission
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Salem, Oregon 97301-2551

and true and correct copies of the Comments only (exhibits were served electronically) were sent by United States Mail, postage prepaid, on June 28, 2002 to:

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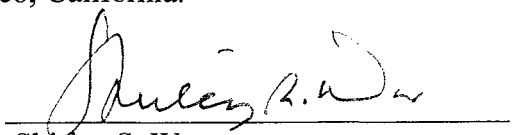

Shirley S. Woo

* Denotes signatory to Protective Order

CERTIFICATE OF SERVICE

UM 1232

I hereby certify that on the 24th day of February, 2006, I served the foregoing QWEST CORPORATION'S REPLY TO COMPLAINANTS' RESPONSE TO QWEST'S MOTION TO DISMISS THE COMPLAINANTS' AMENDED COMPLAINT in the above entitled docket on the following persons via U. S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 24th day of February, 2006

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