

**FACILITY DECOMMISSIONING REIMBURSEMENT AGREEMENT**

THIS FACILITY DECOMMISSIONING REIMBURSEMENT AGREEMENT ("Agreement"), is made and entered into as of this 27 day of DECEMBER, 2001 (the "Effective Date"), between Qwest Corporation ("Qwest") and AT&T Corp., on behalf itself and certain of its affiliates who ordered the Facilities, ("CLEC") (Qwest and CLEC being sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party").

**RECITALS**

WHEREAS, Qwest, a local incumbent exchange provider, and CLEC, a competitive local exchange provider, are parties to certain interconnection agreements (the "Interconnection Agreements"), executed pursuant to sections 251 and 252 of the Federal Telecommunications Act of 1996 (the "Act"); and

WHEREAS, pursuant to the Interconnection Agreements, CLEC has purchased physical and/or virtual collocation and ancillary services from Qwest. CLEC now desires to return, or has already returned, to Qwest the collocation sites identified in Exhibit A (the "Facilities") attached hereto and incorporated by reference; and

WHEREAS, the Parties dispute the rates, terms and conditions that are applicable when CLEC decommissions a collocation site; and

WHEREAS, for some or all of the Facilities, Qwest has charged and CLEC has paid such charges to Qwest in order to decommission the Facilities; and

WHEREAS, the Parties voluntarily enter into this Agreement as a final resolution to disputes arising between the Parties regarding the terms and conditions of CLEC's return of the Facilities and the financial obligations of each Party with respect to each of the Facilities under the Interconnection Agreements.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Facility Decommissioning.** In consideration for the Release and Waiver set forth below, Qwest hereby agrees to decommission the Facilities and to waive all fees and charges associated therewith.

2. **Credit/Reimbursement.** In the event that CLEC was previously invoiced and paid Qwest for the decommissioning quotes and the monthly recurring charges past the date of acceptance of the valid decommissioning application, Qwest shall make a one-time credit to CLEC for the sum of any non-recurring charges paid for the decommissioning and any monthly recurring charges paid for the Facilities after the date of Qwest's acceptance and validation of the decommissioning request. The estimated aggregate credit amount for each collocation site is reflected on Exhibit A. This credit amount will be applied, first, to satisfy any outstanding balances (except amounts in dispute) owed by CLEC to Qwest, if any. If a credit balance remains, the CLEC may request the credit be paid them via check. Such check shall be issued by Qwest within thirty (30) days of the Effective Date hereof.

3. **Release and Waiver.**

(a) In consideration for the credit and/or payments to be made by Qwest to CLEC as provided in Sections 1 and 2 above, CLEC hereby releases and forever discharges 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, liability, 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 decommissioning of the Facilities hereunder (the "CLEC Release and Waiver") as of the Effective Date of this Agreement. CLEC hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Agreement.

(b) In consideration for the CLEC Release and Waiver, Qwest hereby releases and forever discharges CLEC 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, liability, 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 decommissioning of the Facilities hereunder (the "Qwest Release and Waiver") as of the Effective Date of this Agreement. Qwest hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claim which is released or discharged by this Agreement.

(c) As part of the CLEC Release and Waiver described, CLEC expressly agrees to relinquish forever all rights and interest whatsoever in the Facilities and to remove all property it owns from the Facilities within thirty (30) days after the Effective Date of this Agreement at CLEC's own expense.

(d) In the event CLEC fails to remove its equipment from the Facilities as provided above, Qwest may, without notice or demand and in addition to any other right or remedy available at law or equity, remove all of CLEC's equipment from the Facility and store the same at CLEC's expense. CLEC expressly waives any damages occasioned by such removal, provided that Qwest has used due care. Any equipment so removed will be returned to CLEC upon payment in full of all storage costs. If within forty-five (45) days following such equipment removal, CLEC has not requested the return of its equipment and paid any sums owed, then Qwest may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds to cover Qwest's costs of sale and any other undisputed amounts owed by CLEC to Qwest for the Facilities. If there are any amounts in excess of what CLEC owes to Qwest as described in the preceding sentence, Qwest shall remit such amounts to CLEC within thirty (30) days after such sale. Qwest's exercise of any remedies provided for in this Section 3 shall be without prejudice to any other remedies Qwest may have provided for herein or by law.

#### 4. Confidentiality.<sup>7</sup>

(a) The Parties expressly agree that they will keep the substance of the negotiations and or conditions of the settlement and the terms or substance of this Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of negotiations and/or conditions of the settlement and the terms or substance of this Agreement to any person, judicial or administrative 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. It is expressly agreed that this confidentiality provision is an essential element of this Agreement. The Parties agree that this Agreement and negotiations, and all matters related to these two matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level. The Parties further agree that in the event of a breach of the confidentiality provisions of this Agreement, the harm suffered by the injured Party would not be compensable by monetary damages alone and, accordingly, that the injured Party shall, in addition to other available legal or equitable remedies, be entitled to seek an injunction against such breach. Notwithstanding the foregoing, the Parties acknowledge that the fact that Qwest will reimburse CLECs for decommissioning payments previously

made to Qwest has been the subject of non-confidential discussions among Qwest and a group of CLECs. Those discussions are not made confidential by entering into this Agreement. The intent of this Section 4(a) is to maintain in confidence the negotiations between CLEC and Qwest that were specific to the terms of this Agreement, including but not limited to the specific facilities and reimbursement amounts.

(b) In the event either Party has a legal obligation which requires disclosure of the terms and conditions of this 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 for in this Agreement. At least ten days advance notice under this paragraph shall be provided to the other Party, whenever possible.

5. **Binding Arbitration.** Any claim, controversy or dispute between the Parties in connection with this 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 Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement, but shall not have the 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.

6. **Full Settlement.** The Parties acknowledge and agree that legitimate disputes regarding decommissioning of the Facilities and the monetary obligations of each of the Parties with respect to the decommissioning of the Facilities have been raised and that the resolution reached in this Agreement represents a binding compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement shall be deemed full and complete and, except as provided in Section 5 above, cannot be used to the detriment of either Party.

7. **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement except as expressly provided herein.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cannot be rescinded, amended or modified except in a writing executed by authorized representatives of both Parties. The Parties have entered into this Agreement after conferring with legal counsel. Each of the Parties forever waives all right to assert that this Agreement was a result of a mistake in law or in fact.

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

10. **Severability.** If any provision of this Agreement should be declared to be unenforceable by any administrative agency, court of law, or other tribunal of competent jurisdiction the remainder of the Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provision were not part of this Agreement.

11. **Waiver.** The waiver of any right on one or more occasions by either Party shall not constitute a waiver of any such right in any other instance.

12. **Counterparts.** This Agreement may be executed by facsimile signature (provided it is immediately followed by the original by mail) and in any number of counterparts, each of which would be deemed to be original and all of which taken together shall constitute one and the same agreement.

13. **Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words

which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

IN WITNESS THEREOF, the Parties have caused this Facility Decommissioning Reimbursement Agreement to be executed as of this 27 day of Dec. 2001.

AT&T Corp.

By: [Signature]  
Name of Signatory  
Title: District Manager

QWEST CORPORATION

By: [Signature]  
Audrey McKenney  
Title: Senior Vice President

By: [Signature]  
Steve Hansen  
Title: Vice President

C Name	Decommissioning SAR#	Released SAR#	APP SAR# Date	Validation Date	Decommissioning Completion Date (Actual Date MRCs Closed)	State	11 Character C.I.I. of Code	CO Name	Decommission MRCs Paid	Decommission MRCs Not Paid	MRC Ban #	Monthly Recurring Charges Not Paid	Monthly Recurring Charges Paid	# of Days to Credit MRCs	MRC Amount to be Credited	MRCs and MRCs to be Credited	Effective as of Date for MRC Credit	With an Order OO of 12-4- 01 AMT

REDACTED