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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint and Request for)
Expedited Treatment of AT&T Communications) No. UT-991292
of the Pacific Northwest, Inc. Against U S WEST)
Communications, Inc. Regarding Provisioning of) U S WEST'S ANSWER AND
Access Services) AFFIRMATIVE DEFENSES
_____)

INTRODUCTION

U S WEST Communications, Inc., (U S WEST) hereby files its answer to the complaint brought by AT&T Communications of the Pacific Northwest, Inc., (AT&T) on August 18, 1999. The complaint relates to AT&T's long-distance interexchange service in Washington. With respect to its long distance service, AT&T's complaint inaccurately alleges that U S WEST has failed to provide access facilities, has failed to timely provision facilities, and preferred itself, its own affiliates, and certain customers and communities in provisioning the facilities it does provide. U S WEST denies these allegations.

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There are several reasons why the Commission should not even entertain the complaint in the first instance, and should dismiss the complaint without hearing. First, AT&T has failed to properly allege or establish that the Commission has jurisdiction over this complaint. U S WEST believes that the vast majority of services complained about are interstate services that are ordered out of U S WEST's FCC tariff. Federal law is very clear with respect to the fact that U S WEST's service quality obligations are limited to its tariff. In AT&T v. Central Office Telephone, Inc., 118 S. Ct. 1956 (1998) decided June 15, 1998, an AT&T reseller customer had sued AT&T for AT&T's alleged failure to perform certain business commitments to the customer which were not part of AT&T's tariff for the service. These commitments included special provisioning. In an extremely broad decision, the United States Supreme Court found in AT&T's favor and held that the filed rate doctrine dictates that all terms and conditions of a federally tariffed service, specifically including special provisioning, must be governed entirely by the terms of the tariff. This case could not be more on point – to the extent AT&T is ordering access services out of U S WEST's interstate FCC tariff, AT&T is precluded from relief associated with its allegations that U S WEST failed to satisfy AT&T's unilateral service standards and is limited to the relief available to it in U S WEST's FCC tariff. Along with this answer U S WEST has filed a Motion to Dismiss AT&T's Claims in which U S WEST requests that the Commission dismiss this complaint and order AT&T to refile any revised complaint identifying and deleting any claims associated with access service ordered out of U S WEST's interstate FCC tariff.

Second, the complaint should be dismissed because AT&T has failed to state a claim upon which relief can be granted. AT&T's complaint is premised on violations of various Washington statutory provisions. However, these statutes do not establish any specific measurable standard for

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2 providing access service nor do these statutes require U S WEST to comply with AT&T's
3 unilaterally created performance measures.

4 Third, U S WEST believes that the timing of AT&T's complaint and request for expedited
5 relief is suspect. Coincidentally or not, AT&T's complaint was filed shortly after U S WEST
6 began to publicly challenge AT&T's unwillingness to open its cable network to alternative ISPs as
7 part of its pending merger with MediaOne. As the Commission is aware AT&T is facing
8 mounting pressure around the country and from consumers in U S WEST's territory to submit to
9 regulatory parity and open up its cable networks. U S WEST literally had no advance notice that
10 AT&T would file a complaint with the Commission. In the days and weeks prior to the complaint
11 being filed with the Commission, AT&T did not contact U S WEST and request that U S WEST
12 take specific actions in Washington. In fact, the last senior-level correspondence from AT&T to
13 U S WEST regarding its concerns related to access service was a June 30, 1999 letter from B.
14 LaMontagne, AT&T Vice President Local Services and Access Management to John Kelley,
15 U S WEST President Wholesale Markets. In that letter AT&T identified the top 20 orders that
16 were being held due to a lack of facilities. However, none of the 20 orders listed by AT&T in its
17 June 30, 1999 letter were for intrastate access services to be provided in Washington.

18 With regard to the merits of the complaint, U S WEST believes the allegations to be
19 without foundation. During the three months prior to the complaint, U S WEST provisioned
20 access services on the committed due date between 84-90% of the time. AT&T has chosen a
21 different measure of performance, the customer desired due date (CDDD). As will be explained in
22 more detail below, this standard is not based on U S WEST's tariffs or any specific provision of
23 Washington law. In addition, U S WEST has not committed to provisioning to the CDDD. Use of

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2 this measure is both irrelevant and unfair, as it is a unilaterally selected, non-negotiated date
3 imposed by AT&T, and U S WEST has little ability to control whether it can meet the selected
4 date.

5 U S WEST strongly denies that it has acted in a way that is unlawfully discriminatory or
6 preferential. U S WEST makes provisioning decisions with regard to when and where it will add
7 access facilities in order to meet its service obligations and to maintain network performance
8 within required standards. To the extent that U S WEST sometimes does tell customers, including
9 AT&T, that no facilities are available and that service cannot be provided, or will not be provided
10 for a certain number of days, U S WEST does so in accordance with the terms of its tariffs.
11 Dedicated access, or private line services, are not available exclusively from U S WEST. If
12 U S WEST does not have facilities available, AT&T has several other options for service,
13 including obtaining the service from another carrier who does have facilities, or placing its own
14 facilities in order to serve a particular customer or community.

15 **ANSWER**

16 Answering the numbered paragraphs in AT&T's Complaint, U S WEST states as follows:

17 Except as otherwise expressly pleaded, U S WEST denies each and every allegation in the
18 complaint.

19 **PARTIES**

- 20 1. U S WEST admits the allegations in paragraphs 1 and 2.

21 **JURISDICTION**

22 2. Paragraphs 3 through 6 of the complaint assert legal conclusions to which no
23 responsive pleading is required. Nevertheless, U S WEST affirmatively states that AT&T

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incorrectly predicates its allegations of jurisdiction on some Washington statutes and rules which do not confer such jurisdiction, nor authorize the relief requested. U S WEST further states that certain cited provisions such as “WAC 80-36-300” do not exist. With regard to the correctly identified statutes and rules, U S WEST states that the provisions of Washington law speak for themselves and U S WEST denies all allegations inconsistent with Washington statutes or rules.

3. Specifically with respect to access services ordered out of the FCC tariff, the FCC tariff controls U S WEST’s service obligations. U S WEST believes that the vast majority of the services at issue in this complaint are interstate services, provisioned in accordance with U S WEST’s FCC tariffs. The FCC and not the Washington Commission has jurisdiction to consider the complaint as it pertains to interstate services.

FACTUAL ALLEGATIONS

The Nature of the Access Services at Issue

4. U S WEST admits the allegations contained in paragraph 7 of the complaint with regard to the description of access services, except that U S WEST is without knowledge or information sufficient to form a belief as to the truth of the last sentence of that paragraph, and therefore denies the last sentence of paragraph 7. The last sentence states that the complaint addresses both dedicated and switched access services. However, it is unclear from the complaint that this is indeed the case, as the allegations appear to be primarily focused on dedicated access circuits.

5. U S WEST admits the allegations contained in paragraph 8 with regard to the description of switched access services, except that U S WEST denies that the reference to “Plain Old Telephone Service” has any relevance to the allegations in this complaint. A switched access

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2 call, using switched access service, which is what is described in this paragraph, is not the same as
3 “POTS”, and it is unclear what AT&T means by that reference in this paragraph.

4 6. U S WEST admits the allegations contained in paragraph 9, which contains a brief
5 description of the loop facility, as well as reference to a port on the local switch. U S WEST
6 denies that this complaint has anything to do with the provision of unbundled network elements,
7 including loops, ports, or local switching.

8 7. U S WEST admits the allegations contained in paragraph 10, which contains a
9 description of the “interoffice facility”.

10 8. U S WEST admits that blockage or lack of capacity in interoffice facilities may
11 cause customers to be incapable of originating or terminating calls once a certain volume of calls
12 has been reached as set forth in paragraph 11, but denies the remainder of paragraph 11.

13 U S WEST states that all telecommunications networks are designed and engineered to meet
14 certain blocking standards, and will block calls a certain percentage of the time. AT&T’s long
15 distance network is designed and engineered to a certain blocking standard as well.

16 9. U S WEST admits the allegations contained in paragraph 12, which contains a brief
17 description of DS0 and DS1 access services.

18 10. U S WEST is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained in paragraph 13, and therefore denies those allegations.

20 11. U S WEST denies the allegations in paragraph 14 of the complaint. U S WEST
21 states that AT&T purchased approximately \$39 million of intrastate access services in Washington
22 in 1997 and approximately \$22 million of intrastate access services in Washington in 1998.
23 AT&T purchased less than \$400,000 of intrastate private line services in Washington in 1998.

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12. U S WEST denies the allegations contained in paragraph 15. U S WEST admits that intrastate access services are regulated by the Commission, however, AT&T has not distinguished intrastate versus interstate access services. U S WEST denies that dedicated access services are a monopoly service and that dedicated access service are not available from other suppliers in Washington. Dedicated access service is available from many suppliers, including AT&T Local Services, f/k/a TCG Seattle.

13. U S WEST is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and therefore denies those allegations. AT&T has many options in the provisioning of access services, and obtaining those services from U S WEST is but one of those options. Options available to AT&T in the provisioning of access services include self-provisioning, and obtaining access services from a competitive access provider (CAP), many of whom are registered to provide such service in the state of Washington.

14. U S WEST denies the allegations contained in paragraph 17.

15. With regard to paragraph 18 of the complaint, U S WEST states that it is unclear whether or not this is an allegation, and therefore unclear whether or not a response is required. This paragraph appears to be a listing of hypothetical examples, set forth to illustrate AT&T's point, but is not shown to be based on any facts specific to the state of Washington, or the orders that AT&T alleges to be held in this case. If an answer to this paragraph is required, U S WEST states that it denies the allegations set forth therein.

The Use of Direct Measures of Quality (DMOQs)

16. Answering paragraph 19 of the complaint, U S WEST does not dispute, for purposes of this complaint, that AT&T has developed measurements of quality which it refers to

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2 as direct measures of quality (DMOQs). U S WEST is without knowledge or information
3 sufficient to form a belief as to how the DMOQs were developed and how they have been updated,
4 and therefore denies the last sentence of that paragraph.

5 17. Answering paragraph 20 of the complaint, U S WEST admits that AT&T measures
6 U S WEST's performance in meeting AT&T's DMOQs through data reported by U S WEST.
7 U S WEST and AT&T have had extensive discussions about data reporting, but U S WEST denies
8 that these discussions are properly characterized as an "agreed and verified process" for using a
9 common set of data to discuss performance and the issue of sufficiency. U S WEST further denies
10 that AT&T's DMOQs are a relevant measure for the services that are the subject of this complaint.

11 18. Answering paragraph 21 of the complaint, U S WEST states that it is without
12 knowledge or information sufficient to form a belief as to whether or not AT&T in fact uses the
13 same DMOQs for all of the RBOCs. U S WEST specifically denies that it is a monopoly provider
14 of the services at issue. Further, U S WEST also specifically denies that fluctuations in
15 performance between the RBOCs can be determined to be reflective of industry-wide problems,
16 changing circumstances within the industry, or company-specific problems.

17 Answering paragraph 22 of the complaint, U S WEST is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations contained in that paragraph, and
19 U S WEST therefore denies those allegations. AT&T's unilaterally established DMOQs are not a
20 Commission-imposed standard for tariffed access services, nor are the DMOQs an appropriate
21 measure with respect to the adequacy of U S WEST's service.

22 Answering paragraph 23 of the complaint, U S WEST specifically denies that it has ever stated
23 that it understands that it is required to be 100% in compliance with the DMOQs, or that it has

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2 ever stated that it is committed to meeting AT&T's measures of quality, or that it ever promised to
3 take all necessary steps to upgrade technical resources and personnel so as to be able to
4 consistently meet the DMOQs. U S WEST does not believe that AT&T's DMOQs establish any
5 sort of a service or performance standard which U S WEST is required to meet with respect to the
6 services at issue in this complaint. There is no contract or agreement between the parties whereby
7 U S WEST has stated that it will agree to comply with the DMOQs. U S WEST has done nothing
8 more than agree to provide AT&T with the information that it requires to measure U S WEST's
9 performance in accordance with AT&T's self-established DMOQs for access service. U S WEST
10 provides this information to AT&T because AT&T is a customer of U S WEST and AT&T has
11 requested that information. U S WEST believes that it is consistent with good customer service to
12 provide customers information they desire when U S WEST is able to do so and when provision of
13 that information is otherwise appropriate.

14 21. Answering paragraph 24 of the complaint, U S WEST states that it is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
16 paragraph 24, and U S WEST therefore denies those allegations.

17 **U S WEST's Obligations for Providing Access Services**

18 22. Answering paragraph 25 of the complaint, U S WEST denies that it has agreed
19 upon AT&T's DMOQs as a measure of performance. As set forth in later paragraphs in the
20 complaint, it appears that the only DMOQs AT&T is referring to in this and other paragraphs in its
21 complaint have to do with the customer-desired due date (CDDD). U S WEST denies that the
22 CDDD is an appropriate or relevant measure of U S WEST's access provisioning performance.
23 U S WEST's access provisioning performance is governed by its access tariffs, including its

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2 switched access services tariff and its private line tariff. These tariffs do not contain any
3 requirement that U S WEST meet the unilaterally-established customer desired due date.

4 U S WEST denies the other allegations set forth in that paragraph.

5 23. Answering paragraph 26 of the complaint, U S WEST states that it is without
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
7 that paragraph, and U S WEST therefore denies those allegations. Specifically, AT&T in that
8 paragraph references the “RBOC to RBOC comparisons” but does not state the time period which
9 is referenced for those RBOC to RBOC comparisons. AT&T is also not specific with regard to
10 which DMOQs it is referencing in that paragraph and U S WEST is therefore unable to determine
11 whether or not any of these allegations are accurate.

12 24. Answering paragraph 27 of the complaint, U S WEST denies the allegations
13 contained in paragraph 27. U S WEST does not believe that its performance against AT&T’s
14 measures relative to the performance of the other RBOCs “strongly suggests” that there are
15 problems that are specific as to U S WEST.

16 25. Answering paragraph 28 of the complaint, U S WEST admits that AT&T has
17 established direct measures which measure customer-desired due date with regard to provisioning
18 DS1 and DS0 services. U S WEST denies that a single measure of quality such as customer-
19 desired due date gives a complete or accurate picture of provisioning performance. U S WEST
20 believes that the customer-desired due date is one that gives a particularly distorted picture with
21 regard to U S WEST’s service provisioning because it is a measure that is wholly within AT&T’s
22 control. AT&T can unilaterally dictate the customer-desired due date without regard to whether or
23 not the desired due date is reasonable under the circumstances or whether or not facilities even

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2 exist. U S WEST has in the past made it very clear to AT&T that it does not believe that the
3 customer-desired due date is a relevant or reasonable measure of service quality in terms of
4 provisioning. U S WEST has previously indicated to AT&T that its ability to meet a firm order
5 commitment is a more relevant measure of service quality. U S WEST's ability to meet its firm
6 order commitment is consistently in excess of 80%.

7 26. In answering paragraph 29 of the complaint, subject to the caveats discussed in the
8 paragraph above with regard to the relevancy of the customer-desired due date as a measure of
9 service quality, U S WEST admits that the percentages shown in the table are accurate. However,
10 U S WEST specifically denies that these percentages are accurate measures of "timely
11 provisioning." Rather, they reflect the percent at the time AT&T's customer-desired due date is
12 met. The customer-desired due date is unilaterally established by AT&T and not included in any
13 Commission standard.

14 27. Answering paragraph 30 of the complaint, U S WEST is without knowledge or
15 information sufficient to form a belief as to the truth or accuracy of the allegations contained in
16 paragraph 30, and therefore U S WEST denies those allegations. AT&T has never provided
17 U S WEST with comparable measures to show that the other RBOCs face similar or comparable
18 circumstances to U S WEST in provisioning.

19 28. Answering paragraph 31 of the complaint, U S WEST states that it is without
20 knowledge and information sufficient to form a belief as to the truth of the allegations contained in
21 paragraph 31, and therefore denies those allegations. U S WEST is unclear whether the allegation
22 refers only to the customer-desired due date DMOQ or other, unspecified DMOQs. U S WEST
23 further denies that network upgrades and employment of adequate personnel are necessarily related

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2 to a company's ability to meet a customer-desired due date.

3 Answering paragraph 32 of the complaint, U S WEST states that AT&T attempts to bolster
4 its complaint by citing selective language in the FCC's LNP Tariff Order as a basis for its claim
5 that U S WEST's network is less up-to-date than other local exchange carriers ("LEC"). The
6 Federal Communications Commission's ("FCC") Long-Term Number Portability ("LNP") Tariff
7 Order provides no support for AT&T's assertion. The FCC made no findings with respect to the
8 efficiency of U S WEST's network.

9 Answering paragraph 33 of the complaint, U S WEST admits that it reported to the FCC in
10 ARMIS Report 43-05 that it received complaints in Washington from business and residential
11 customers as set forth in the complaint. However, the numbers set forth in the complaint must be
12 viewed in the context of the total number of customers in the state and the total volume of order
13 activity in the state. During 1998, U S WEST received and processed 3,270,674 orders from
14 business and residential customers. As can be seen from these numbers, the business complaints
15 and residential complaints are less than .065 % of the total number of orders that U S WEST
16 received and processed. U S WEST denies that it is not applying sufficient resources and
17 personnel to adequately fulfill customer requests and denies that the data set forth in FCC ARMIS
18 Report 43-05 establishes that U S WEST is not applying sufficient resources and personnel.

19 Answering paragraph 34 of the complaint, U S WEST denies that it has failed to timely
20 provision access facilities and denies that it has failed to meet customer-desired due dates that are
21 promised. As set forth elsewhere in this answer, U S WEST does not promise to meet customer-
22 desired due dates, but rather strives to meet its own firm order commitment dates. Firm order
23 commitments are generally met, on an industry-wide basis, in the 80 to 90% range. U S WEST's

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2 percent of installation commitments met for provisioning interexchange carriers special access
3 circuits has consistently improved from 1996 through 1997 and 1998, from 79.1% in 1996 to
4 81.94% in 1997 to 88.65% in 1998. Responding to AT&T's allegation that U S WEST has
5 refused to commit to provision facilities at all where none are currently available, U S WEST
6 states that its obligation to provision special access circuits is conditioned upon the availability of
7 facilities, in accordance with its tariffs. U S WEST cannot build every facility everywhere for
8 every customer who requests it and U S WEST's tariff language thus contains the reasonable
9 limitation that it will provision service where facilities are available.

10 Answering paragraph 35 of the complaint, U S WEST denies that any of its actions force
11 AT&T into a position of being unable to offer interexchange service to customers or to offer
12 service in an untimely manner. U S WEST is without knowledge or information sufficient to form
13 a belief as to the truth of the balance of the allegations contained in that paragraph, and therefore
14 U S WEST denies those allegations. U S WEST does know that U S WEST is not AT&T's only
15 alternative for provisioning the services it requests. For example, AT&T recently acquired TCG,
16 now known as AT&T Local Services. AT&T's annual report shows that as of year-end 1998,
17 AT&T's Local Services' operations had a total of 542,544 access lines in service. Voice grade
18 equivalents in service were 11.6 million. AT&T stated that its Local Services' revenues in 1998
19 increased \$412 million, or 73.2%, compared with 1997, due primarily to TCG's growth in *private*
20 *line*, switch usage and facilities, interconnection and data/internet services. Local Services'
21 revenues increased in 1997 by 107.2%, also driven by growth in TCG. Furthermore, U S WEST
22 believes that AT&T will be able to provision private line services over the cable network that it
23 recently acquired with its acquisition of TCI and the additional cable facilities it will acquire with

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2 its impending acquisition of MediaOne. Additionally, other carriers aside from AT&T's affiliates
3 or subsidiaries also provide private line services, and U S WEST therefore denies that any action
4 on its part has placed AT&T in a position of being unable to offer services to its customers.

5 **U S WEST's Provisioning Decisions**

6 33. Answering paragraph 36 of the complaint, U S WEST denies the allegations
7 contained in that paragraph except as set forth herein. AT&T states that it provides U S WEST
8 with forecasts on a bi-annual basis. U S WEST understands that to mean that AT&T provides
9 those forecasts semi-annually, i.e., at least twice per year. U S WEST agrees that AT&T does
10 provide those forecasts every six months, but these forecasts are only forecasts for entrance
11 facilities. The entrance facility is the facility between U S WEST's serving wire center and
12 AT&T's point of presence (POP). These forecasts provided by AT&T have nothing whatsoever to
13 do with the provisioning of private line services, which is a circuit between an end-user customer
14 and a U S WEST central office. AT&T's forecasts do not give U S WEST any ability to know
15 where or when AT&T will be ordering private line services for its end-user customers. U S WEST
16 admits that it has from time to time told AT&T that it could not provision service because no
17 facilities were available and that U S WEST was uncertain whether or when such facilities would
18 become available. However, U S WEST does consistently monitor orders, facilities, and routes
19 and will, in all instances, offer service to AT&T when and if the facilities become available where
20 requested.

21 34. Answering paragraph 37 of the complaint, U S WEST denies the suggestion that it
22 arbitrarily or unilaterally makes decisions with regard to provisioning facilities. U S WEST makes
23 decisions with regard to provisioning based on a case-by-case analysis of the actual and forecasted

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2 demand and does not take into account who the customer is. Thus, U S WEST would make a
3 decision to provision facilities over a particular route or not provision those facilities based on
4 business case analysis, not whether the customer requesting the facilities was AT&T or
5 U S WEST's own retail end-user customer. U S WEST specifically denies that AT&T has no
6 alternative source for these facilities or that U S WEST's provisioning decisions impact AT&T's
7 ability to serve customers in these areas where facilities do not currently exist. AT&T is capable
8 of self-provisioning facilities to serve customers in areas where there are no facilities available,
9 and AT&T is thus incorrect when it states that it has no alternative source for these facilities.

10 35. Answering paragraph 38 of the complaint, U S WEST denies that U S WEST and
11 AT&T ever agreed upon any DMOQs between the parties. U S WEST further states that to the extent
12 that it declines to provide service to AT&T or any other customer, it does so in a manner consistent
13 with the tariff terms and conditions which cover access services, including the ability to decline to
14 provide service in an instance where facilities are not available. AT&T's unilaterally established
15 DMOQs are not a Commission-imposed standard for tariffed access services, nor are the DMOQs an
16 appropriate measure with respect to the adequacy of U S WEST's service.

17 Answering paragraph 39 of the complaint, U S WEST is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations contained in paragraph 39, and
19 U S WEST therefore denies those allegations. U S WEST believes that the vast majority of the
20 held orders for access facilities are orders placed pursuant to U S WEST's FCC tariffs and are thus
21 not orders for intrastate services. Even assuming the figure given for held orders is correct, that
22 number is a miniscule percentage of AT&T's total U S WEST provisioned circuits. U S WEST
23 disagrees that a held order results when it cannot commit to a customer-desired due date.

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Answering paragraph 40 of the complaint, U S WEST denies the allegations contained in that paragraph. In addition, AT&T has failed to differentiate intrastate and interstate access facilities. It is also unclear from the complaint how AT&T calculated the number of access lines that it contends were “potentially” out of service or unable to obtain the service it desired. AT&T’s unilaterally established DMOQs are not a Commission-imposed standard for tariffed access services, nor are the DMOQs an appropriate measure with respect to the adequacy of U S WEST’s service.

Answering paragraph 41 of the complaint, U S WEST denies the allegations contained therein. The allegations regarding 24-hour response and 30 day resolution do not reflect a U S WEST policy as stated in the complaint. U S WEST's process for the provisioning of access special services is to issue a Firm Order Confirmation (“FOC”) after the design of the circuit. If facilities are in place this takes place 48 hours after service order issuance. However, issuance of an FOC is not always possible within 48 hours and resolution is not always possible within 30 days.

39. Answering paragraph 42 of the complaint, U S WEST admits the allegations contained in that paragraph.

Answering paragraph 43 of the complaint, U S WEST denies the allegations contained in that paragraph. All telecommunications networks, including U S WEST’s, are engineered to meet certain blocking standards. No network is designed with sufficient capacity so that it will never block calls. AT&T in this paragraph suggests that call blocking has been a problem that it has experienced and which has been exacerbated by a lack of facilities. U S WEST states that it does not engineer its network to a non-blocking standard, but rather designs and engineers its network in accordance with the network standards set forth in WAC 480-120-515 which provide

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2 for an industry-accepted standard blocking of P.01 on end office trunks and P.005 on tandem
3 trunks. U S WEST further states that it has been both proactive and cooperative in working with
4 AT&T in order to enable AT&T to properly anticipate and install adequate facilities at its POP in
5 order to meet call blocking standards.

6 Answering paragraph 44 of the complaint, U S WEST admits that it cannot expedite
7 every single order, nor can it expedite every order that AT&T would like to see provisioned on a
8 more rapid basis than the firm order commitment provided. U S WEST agrees that blocking of
9 calls does not amount to a condition that would cause U S WEST to expedite an order. As noted
10 above, all telecommunications networks, including U S WEST's, are engineered to meet certain
11 blocking standards. No network is designed with sufficient capacity so that it will never block
12 calls.

13 42. Answering paragraph 45 of the complaint, U S WEST states that it is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
15 that paragraph, and U S WEST therefore denies those allegations.

16 **U S WEST's Provisioning**

17 43. Answering paragraph 46 of the complaint, U S WEST denies the allegations
18 contained in that paragraph. As U S WEST has stated above, U S WEST has never committed to
19 meet 100% compliance with AT&T's DMOQs and U S WEST does not believe that meeting a
20 customer-desired due date is a relevant service quality measure. U S WEST disagrees with the
21 characterization of "CDDD commitments" because U S WEST does not commit to customer-
22 desired due dates. AT&T's unilaterally established DMOQs are not a Commission-imposed
23 standard for tariffed access services, nor are the DMOQs an appropriate measure with respect to

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2 the adequacy of U S WEST's service.

3 44. Answering paragraph 47 of the complaint, U S WEST denies the allegations
4 contained in that paragraph.

5 45. Answering paragraph 48 of the complaint, U S WEST states that it is without
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
7 that paragraph, and U S WEST therefore denies those allegations. U S WEST notes that AT&T
8 suggests in this paragraph that it is making commitments to its end-user customers based on the
9 customer-desired due date that it provides to U S WEST. AT&T has been told repeatedly by
10 U S WEST that U S WEST does not commit to the customer-desired due date and if AT&T has
11 been using this date as a basis upon which to make promises to its own end-user customers, it
12 would appear that AT&T is simply acting in complete disregard of the accurate information that
13 U S WEST has given it in regard to its ability to provision to the CDDD.

14 U S WEST Does Not Discriminate in Favor of Itself, Its Affiliates or Any Communities in the
15 Provision of Access Facilities

16 46. Answering paragraph 49 of the complaint, U S WEST admits that AT&T had asked
17 U S WEST to identify "hot spots" in its network. U S WEST has refused to do so because such
18 information is competitively sensitive and U S WEST is not obligated under its tariffs or any other
19 regulatory requirements to disclose such competitively sensitive information to AT&T. With regard
20 to the second and fourth sentences of paragraph 49, U S WEST is without information or knowledge
21 sufficient to form a belief as to the truth of those statements, and U S WEST denies those statements.
22 U S WEST does not know whether or not the information that AT&T has requested would enable it
23 to anticipate areas where provisioning may be a problem or where orders may not be filled by the

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2 customer-desired due date. The information would, however, provide AT&T with a significant
3 competitive advantage vis-à-vis U S WEST and other carriers by giving AT&T information about
4 U S WEST's network and the plans of other carriers which AT&T has no right to have. U S WEST
5 denies that AT&T has asked U S WEST to identify central offices were U S WEST has elected to
6 make "significant expansions to serve its preferred customers."

7 47. Answering paragraph 50 of the complaint, U S WEST denies that it discriminates in
8 favor of its affiliates. U S WEST Interprise is not an affiliate of U S WEST but rather is an operating
9 division within U S WEST Communications, Inc. U S WEST denies the other allegations in that
10 paragraph, and denies that it provides the "hot spots" information to its own retail divisions, to
11 affiliates, or to other carriers.

12 48. Answering paragraph 51 of the complaint, U S WEST denies the allegations contained
13 therein. U S WEST's decisions to build facilities are not made "unilaterally" but are a result of
14 business and regulatory requirements, including requirements such as U S WEST's obligation to serve
15 and U S WEST's obligation to meet interim and long-term number portability requirements.
16 Additionally, business factors play a large role in U S WEST's decision when and where to build
17 facilities. U S WEST will build when adequate and predictable demand exists to sustain and justify
18 the investment required to provision the facilities. AT&T, in this paragraph of its complaint, seems
19 to have the theory that if only U S WEST or other carriers would provision facilities in an area, that
20 economic growth would necessarily follow. U S WEST does not necessarily agree with AT&T's
21 premise and does not believe that AT&T can establish such premise as fact. If that were the case,
22 there would never be any risk in deploying telecommunications facilities, because all a company
23 would need to do would be to build facilities and economic growth would follow. That is clearly not

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the case. The more likely scenario is that businesses begin to grow or establish themselves in an area and then demand additional telecommunications facilities, which are provisioned by a carrier who finds it economic to do so. This is not discriminatory, but is rather a rational business decision in order to ensure the health and vitality of the entire network, not simply selected communities.

49. Answering paragraph 52 of the complaint, U S WEST denies the allegations contained in that paragraph and denies that it discriminates against AT&T, any community, or the businesses or consumers residing therein.

50. Answering paragraph 53 of the complaint, U S WEST denies the allegations contained in that paragraph. U S WEST denies that it makes business or economic decisions for the communities in Washington and for AT&T. As discussed in other paragraphs in this complaint, U S WEST does not determine when and where AT&T will be able to serve current and potential end user customers. AT&T has other options for obtaining facilities to serve those customers, including self-provisioning through AT&T Local Services, using its existing cable network, or obtaining facilities from other carriers.

51. Answering paragraph 54 of the complaint, U S WEST denies the allegations contained in that paragraph. U S WEST denies that its facilities are inadequate, inefficient or unreasonable. AT&T has presented absolutely no facts or evidence in this complaint, and will be unable to present any facts or evidence during any hearing, that U S WEST's network is inadequate or inefficient. U S WEST's network is built according to industry standards. Further, U S WEST does not discriminate between its wholesale and its retail customers. U S WEST's own service performance data shows that AT&T is receiving service at a level that is on par with U S WEST's own retail customers.

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2 Answering paragraph 55 of the complaint, U S WEST specifically denies the allegations contained
3 in that paragraph. U S WEST has every incentive to provide adequate and efficient facilities to serve
4 AT&T as its wholesale customer and to serve its own retail customers. U S WEST decides to replace
5 or augment facilities or build new facilities when it is economically rational to do so, or when
6 U S WEST is required to do so by legal or regulatory requirements. U S WEST denies that AT&T
7 is dependent upon the services of U S WEST in U S WEST's territory or that the services at issue in
8 this case are monopoly services. U S WEST accepts that AT&T is unable to make informed and
9 reasonable commitments to its customers. However, this is not the fault of U S WEST but rather is
10 AT&T's responsibility if it does not adequately plan for or provision service to its customers.
11 U S WEST denies that it discriminates against its wholesale customers in favor of its retail customers,
12 or that it has any incentive to do so.

13 Answering paragraph 56 of the complaint, U S WEST admits that AT&T has requested data with
14 regard to U S WEST's treatment of itself, its own customers, its affiliates and other interexchange
15 carriers. U S WEST has denied AT&T this information because the information sought is
16 competitively sensitive. U S WEST does not believe that AT&T has the right to access information
17 of other interexchange carriers and U S WEST has therefore denied AT&T access to this information.
18 U S WEST states that the ARMIS Reports, referenced elsewhere in AT&T's complaint, do contain
19 some data with regard to U S WEST's provisioning of service and that data is publicly available.

20 **Attempts To Reach a Resolution**

21 54. Answering paragraph 57 of the complaint, U S WEST denies the allegations
22 contained in that paragraph. U S WEST admits that it has attempted to identify and respond to
23 AT&T's concerns regarding access service.

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55. Answering paragraph 58 of the complaint, U S WEST denies the allegations contained in that paragraph.

56. Answering paragraph 59 of the complaint, U S WEST admits that AT&T filed a complaint against U S WEST.

57. Answering paragraph 60 of the complaint, U S WEST denies the allegations contained in that paragraph. U S WEST admits that U S WEST and AT&T attempted to resolve certain access service issues and that a final agreement with respect to these issues was not implemented.

58. Answering paragraphs 61 and 62 of the complaint, U S WEST admits that U S WEST and AT&T attempted to resolve certain access service issues and that a final agreement with respect to these issues was not implemented.

59. Answering paragraph 63 of the complaint, U S WEST denies the allegations contained in that paragraph. U S WEST admits that U S WEST and AT&T have attempted to resolve certain access service.

60. Answering paragraph 64 of the complaint, U S WEST admits that the Commission allowed U S WEST a reduced rate of return in its 1995 rate case, but denies that the Commission's findings or rationale in that order support the complaint in this case. U S WEST states that the 1995 rate case order in Docket UT-950200 speaks for itself, and denies any allegations inconsistent with that order.

CAUSES OF ACTION

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Count I: Failure to Furnish Necessary Facilities

61. Answering paragraph 65 of the complaint, U S WEST incorporates its admissions and denials to paragraphs 1 through 64 as if fully set forth herein.

62. Answering paragraphs 66 through 68 of the complaint, U S WEST states that the cited provisions of the Revised Code of Washington speak for themselves, and U S WEST specifically denies any allegations that are inconsistent with the provisions of those statutes.

63. Answering paragraph 69 of the complaint, U S WEST agrees that WAC 480-120-500 does not attempt to establish a mandatory standard of care. With regard to the other provisions of that rule, the rule speaks for itself and U S WEST denies any allegations that are inconsistent with the provisions of that rule.

64. Answering paragraphs 70 and 71 of the complaint, U S WEST states that it has not unlawfully failed to provide AT&T and its customers adequate access facilities which carry toll services and that U S WEST has not prohibited AT&T's customers from utilizing toll facilities to make calls. U S WEST specifically denies that it is in violation of the cited provisions of the statutes and rules. U S WEST further states that to the extent AT&T purports to bring this complaint on behalf of its customers, AT&T lacks the standing to do so and fails to state a claim upon which relief can be granted.

65. Answering paragraph 72 of the complaint, U S WEST should not be ordered to construct access facilities to fill all held orders because such an order is not necessary for customers in the state of Washington to receive adequate and effective toll service. Such an order would result in a preference being shown to AT&T and would prevent U S WEST from effectively planning and managing its network. Such an order would have a negative result for U S WEST's

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2 customers, the customers of other interexchange carriers, and the customers of other carriers in the
3 state because such an order would divert necessary funds from needed projects in order to
4 construct a network to AT&T's whim.

5 **Count II: Failure To Reasonably Furnish Requested Telecommunications Services**

6 66. Answering paragraph 73 of the complaint, U S WEST incorporates its admissions
7 and denials to paragraphs 1 through 64 as if fully set forth herein.

8 67. Answering paragraphs 74 through 76 of the complaint, U S WEST states that the
9 cited provisions of the Revised Code of Washington and the Washington Administrative Code
10 speak for themselves, and U S WEST specifically denies any allegations that are inconsistent with
11 the provisions of those statutes.

12 68. Answering paragraphs 77 and 78 of the complaint, U S WEST states that it has not
13 unlawfully failed to provide AT&T and its customers access facilities. In certain instances
14 U S WEST is unable to provide service, but in instances where facilities are not available,
15 U S WEST is not obligated to provide those facilities. U S WEST specifically denies that it is in
16 violation of the cited provisions of the statutes and rules. U S WEST further states that to the
17 extent AT&T purports to bring this complaint on behalf of its customers, AT&T lacks the standing
18 to do so and fails to state a claim upon which relief can be granted.

19 69. Answering paragraph 79 of the complaint, U S WEST should not be ordered to
20 construct access facilities to fill all orders because such an order is not necessary for customers in
21 the state of Washington to receive adequate and effective toll service. Such an order would result
22 in a preference being shown to AT&T and would prevent U S WEST from effectively planning
23 and managing its network. Such an order would have a negative result for U S WEST's

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customers, the customers of other interexchange carriers, and the customers of other carriers in the state because such an order would divert necessary funds from needed projects in order to construct a network to AT&T's whim.

Count III: Unreasonably Prejudicing and Disadvantaging AT&T, and Preferring Itself and Its Affiliates, in the Provision of Non-Competitive Access Services

70. Answering paragraph 80 of the complaint, U S WEST incorporates its admissions and denials to paragraphs 1 through 64 as if fully set forth herein.

71. Answering paragraphs 81 through 83 of the complaint, U S WEST states that the cited provisions of the Revised Code of Washington speak for themselves, and U S WEST specifically denies any allegations that are inconsistent with the provisions of those statutes.

72. Answering paragraph 84 of the complaint, U S WEST denies the allegations contained in that paragraph. AT&T states that the access "facilities" that it orders are noncompetitive "services". However, facilities are not services. U S WEST denies that the access services that it provides to AT&T are noncompetitive. AT&T purchases dedicated access from U S WEST and from many other carriers, as well as self-provisioning that dedicated access. To the extent that AT&T purports in this paragraph to complain on behalf of its customers with regard to switched access services, U S WEST states that AT&T lacks standing to do so and fails to state a claim upon which relief can be granted.

73. Answering paragraphs 85 and 86 of the complaint, U S WEST states that it has not unlawfully failed to provide AT&T and its customers access facilities which carry toll services and that U S WEST has not subjected AT&T or its customers to any unreasonable or unlawful prejudice or disadvantage. U S WEST specifically denies that it is in violation of the cited provisions of the statutes and rules. U S WEST further states that to the extent AT&T purports to bring this complaint

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77. AT&T asks the Commission to find, pursuant to RCW 80.36.160 and RCW 80.36.260, that U S WEST's failure to provision necessary access facilities constitutes an unreasonable and unnecessary practice resulting in a failure to equally utilize toll facilities of all carriers, and failure to secure adequate facilities. This request should be denied. U S WEST's practices are consistent with its access tariffs, and are not "unreasonable" or "unnecessary", nor do they result in a "failure to utilize toll facilities".

78. AT&T asks the Commission to find, pursuant to RCW 80.36.090, 80.36.080 and WAC 480-120-051, that U S WEST's failure to timely provision access facilities upon request constitutes a failure to supply, in a prompt and efficient manner, proper facilities for telephonic communication. This request should be denied. AT&T has not alleged or demonstrated even a single instance of U S WEST failing to timely provision intrastate access facilities. U S WEST is permitted, under applicable tariffs, statutes, and rules, to have held orders. The existence of held orders is not, by itself, evidence of a failure to promptly provision facilities.

79. AT&T asks the Commission to find, pursuant to RCW 80.36.170 and RCW 80.36.186, that U S WEST's practice of "failing to timely provision access facilities, and refusal to provision some facilities at all" while at the same time "growing and investing in its own and its affiliates' businesses and preferred communities", constitutes giving itself and its affiliates an unreasonable preference and unreasonably disadvantaging AT&T and its customers. The Commission should deny this request. The allegations in the complaint are entirely unsubstantiated on this issue. U S WEST makes reasonable business decisions which are consistent with demand for service and the opportunity for recovery of costs. U S WEST does not prefer itself or its affiliates, and makes decisions without regard to whether or not AT&T is the

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2 customer.

3 80. AT&T asks the Commission to find, pursuant to RCW 80.36.140, that U S WEST's
4 practices as alleged in this Complaint, are inadequate, inefficient, improper and insufficient. This
5 request should be denied. AT&T has not alleged or demonstrated even a single instance of
6 U S WEST's practices with regard to the provision intrastate access facilities that is in violation of
7 RCW 80.36.140.

8 81. AT&T asks the Commission to order, pursuant to WAC 80.36.300(4), that U S
9 WEST not subsidize its or its affiliates' competitive business ventures with rates received from
10 non-competitive services, particularly to the detriment of other carriers and other carriers'
11 customers. U S WEST does not do so, and AT&T cannot establish any subsidy, so such an order
12 is unnecessary and the request for relief should be denied.

13 82. AT&T ask the Commission, under the authority granted it in RCW 80.36.160 and
14 80.36.260, to order U S WEST to immediately fill all of AT&T's outstanding held orders, whether
15 those result from a lack of available facilities or from Customer Desired Due Dates which have not
16 been met on time. The Commission should deny this request. Such an order from the
17 Commission would be arbitrary, would constitute improper regulation by the Commission of
18 interstate services, and would result in a preference being granted to AT&T over U S WEST's
19 other customers.

20 83. AT&T asks the Commission, under the authority granted it in RCW 80.36.140 and
21 WAC 480-120-535(3)(b), to order U S WEST to report to the Commission and to AT&T at least
22 monthly the number of AT&T orders for access facilities which are held due to a lack of available
23 facilities, and U S WEST's plan for remedying the situation and filling those orders within 30

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2 days. This request should be denied. Such reporting requirements are not supported by the
3 allegations in this complaint, are not supported by any rule or law in Washington, and would result
4 in AT&T being granted an unreasonable preference over U S WEST's other customers.

5 Additionally, these requirements are not necessary because AT&T is generally aware of what
6 orders are held and why.

7 84. AT&T asks the Commission, under the authority granted it in RCW 80.36.140 and
8 WAC 480-120-535(3)(a), to order U S WEST to report to the Commission and to AT&T at least
9 monthly the number of installation appointments met, including the percentage of time that such
10 commitments are not met and the duration of delay from the CDDD to the time the facilities are
11 actually delivered in working condition, and U S WEST's plan for remedying its inability to
12 deliver requested facilities on time. This request should be denied. Such reporting requirements
13 are not supported by the allegations in this complaint, are not supported by any rule or law in
14 Washington, and would result in AT&T being granted an unreasonable preference over
15 U S WEST's other customers. Additionally, these requirements are not necessary because AT&T
16 is generally aware of the number of installation appointments met.

17 85. AT&T asks the Commission, under the authority granted it in RCW 80.36.140 and
18 WAC 480-120-535(4), to order U S WEST to report to the Commission and to AT&T the same
19 information requested in (2) and (3) above for U S WEST itself and for its affiliates, including
20 Interprise, separately, so that the Commission may ascertain whether U S WEST is continuing to
21 unreasonably prefer or advantage one carrier or affiliate over others, or to discriminate against
22 certain carriers and their customers. This request for relief should be denied. There is no evidence
23 whatsoever that U S WEST has preferred or advantaged itself or any other carrier over AT&T, and

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2 a reporting requirement premised on that assumption is without support.

3 86. AT&T asks the Commission, under the authority granted it in RCW 80.36.140 and
4 WAC 480-120-016, to order U S WEST to respond to the forecasts provided by AT&T for all
5 access and interoffice facilities within 2 weeks of receiving the forecasts, notifying both the
6 Commission and AT&T of any locations where U S WEST believes such facilities will be
7 unavailable or their availability delayed if ordered by AT&T within the forecasted period, and
8 providing a plan for remedying the situation prior to the time AT&T forecasts placing such orders.
9 This request should be denied. U S WEST works with AT&T in the forecasting process, and there
10 is neither allegation nor evidence that U S WEST has handled any AT&T forecasts improperly.
11 Thus, the requested relief is not necessary.

12 87. AT&T asks the Commission, under the authority granted it in RCW 80.36.140 and
13 WAC 480-120-016, to order U S WEST to notify both the Commission and AT&T on a monthly
14 basis of any geographic areas in the state where U S WEST anticipates access or interoffice
15 facilities will be unavailable in the coming year and to provide a plan for remedying the situation.
16 This request for relief should be denied. It is vague and overbroad, and essentially asks
17 U S WEST to share its network planning details with the Commission and with AT&T in a way
18 which is entirely unwarranted. U S WEST, as of the date of filing this answer, believes it has only
19 two held orders for intrastate facilities, making the sweeping reporting requirements contained in
20 this and other requests for relief unnecessary.

21 88. Finally, AT&T asks the Commission, under the authority granted it in RCW
22 80.04.380, to assess penalties against U S WEST for every current held order, every future held
23 order and all orders which are not timely filled. This relief is entirely unwarranted and should be

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2 denied. Penalties may only be assessed for violation of a Commission law, order, rule, or other
3 requirement. Present or future held orders do no constitute a violation of a Commission law,
4 order, rule, or other requirement, nor is there any requirement that U S WEST fill orders on the
5 date that AT&T demands. AT&T has not established any basis upon which penalties may be
6 assessed.

7
AFFIRMATIVE DEFENSES

- 8 1. AT&T's complaint fails to state a claim upon which relief can be granted.
- 9 2. To the extent to which AT&T's allegations relate to interstate service, the
10 Commission lacks jurisdiction to consider such claims and/or they are preempted by federal law.
- 11 3. U S WEST provides access services in accordance with its lawful tariffs currently
12 in effect, which are on file with the Commission and the Federal Communications Commission.
13 U S WEST's effective tariffs have the force and effect of law, and U S WEST is not obligated to
14 provision service contrary to or in excess of the requirements and obligations set forth in the
15 tariffs.
- 16 4. AT&T's claims are barred by the doctrines of release, res judicata, collateral
17 estoppel, waiver, estoppel, and laches.
- 18 5. AT&T's claims are barred by the doctrine of unclean hands.
- 19 6. To the extent that AT&T's complaint purports to be brought on behalf of its end
20 user customers, or to seek relief for those customers instead of AT&T directly, AT&T lacks
21 standing to bring the complaint.
- 22 7. AT&T's claims are barred by its failure of consideration supporting the DMOQs.
- 23 8. AT&T's claims are barred by the doctrine of accord and satisfaction.

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9. To the extent to which AT&T has suffered any injury, that injury is the result of AT&T's own conduct.

To the extent to which AT&T has suffered any damages, AT&T has failed to mitigate such damages.

11. AT&T's federal claims are barred by the filed rate doctrine.

DATED this 16th day of September, 1999.

U S WEST Communications, Inc.

Lisa A. Anderl, WSBA No. 13236