

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**In the Matter of the Petition of Qwest
Corporation for Arbitration with Eschelon
Telecom, Inc. Pursuant to 47 U.S.C. Section
252 of the Federal Telecommunications Act of
1996**

Docket No. UT-063061

EXHIBIT DD-4 TO

**DIRECT TESTIMONY OF DOUGLAS DENNEY
ON BEHALF OF ESCHELON TELECOM, INC.**

SEPTEMBER 29, 2006

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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IDAHO PUBLIC
UTILITIES COMMISSION

IN RE:

PETITION OF MCLEODUSA
TELECOMMUNICATIONS SERVICES,
INC., FOR ENFORCEMENT OF
INTERCONNECTION AGREEMENT
WITH QWEST CORPORATION

Docket No. MTI-T-05-01

**PETITION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.,
FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT
WITH QWEST CORPORATION**

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), through its undersigned counsel, and pursuant to Idaho Code § 61-501, petitions the Idaho Public Utilities Commission ("Commission") for enforcement of its interconnection agreement with Qwest Corporation ("Qwest"). This Petition stems from a dispute between McLeodUSA and Qwest over Qwest's right under the interconnection agreement to demand security deposits from McLeodUSA for services provided under the agreement, and to discontinue services to McLeodUSA should McLeodUSA not comply with Qwest's demand. Qwest has recently demanded that McLeodUSA pay more than \$15.9 million to Qwest within 10 days—\$971,870.45 in Idaho alone—or Qwest will "suspend order activity" and "disconnect services" provided to McLeodUSA. Rather than follow the clear terms of the interconnection agreement regarding dispute resolution, Qwest has made extortionate demands rather than adopt the approach of established telecommunications carriers that respect their contractual obligations. McLeodUSA seeks an order from this Commission that Qwest may not demand a security deposit and that Qwest may not "suspend order activity" or "disconnect services" until all procedures for dispute resolution in the interconnection agreement have been satisfied. Because

A. Qwest Has No Right To Demand A Security Deposit Under The Interconnection Agreement.

21. Nothing in the Interconnection Agreement gives Qwest the right to demand a security deposit from McLeodUSA at this time. Section (A)3.4.3 of Part A of the General Terms provides Qwest's rights to a security deposit under certain conditions, but none of the conditions allowing Qwest to invoke those rights have been satisfied. First, Section (A)3.4.3 is a subsection of Section (A)3.4 titled "Payment." Section (A)3.4.1 defines the scope of Section (A)3.4: "Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice." (emphasis added) Thus, any rights to a security deposit under Section (A)3.4.3 are limited to security for payments made for services provided under the Interconnection Agreement. Therefore, Qwest is wrong to make the connection as it does in the Qwest Demand Letter that "outstanding balances under the Interconnection Agreement and other agreements, tariffs, or accounts," justify its demand that McLeodUSA provide Qwest with a security deposit. Section (A)3.4.3 does not grant rights to Qwest to demand a security deposit for payments under another agreement or under a Qwest tariff.

22. Section (A)3.4.3 provides as follows:

[Qwest] will determine McLeod's credit status based on previous payment history with [Qwest] or credit reports such as Dun and Bradstreet. If McLeod has not established satisfactory credit with [Qwest] or if McLeod is repeatedly delinquent in making its payments, [Qwest] may require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) calendar days or more delinquent for three (3) consecutive months.

23. Qwest fails to satisfy any of these conditions. Taking the second condition first, Qwest does not allege, and could certainly not prove, that McLeodUSA has been "repeatedly delinquent" on any payments under the Interconnection Agreement. As stated above,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, March 30, 2005, I caused a true and correct copy of the foregoing **MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., MOTION FOR EMERGENCY RELIEF and PETITION OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., FOR ENDORCEMENT OF INTERCONNECTION AGREEMENT WITH QWEST CORPORATION** to be served by the method indicated below, and addressed to the following:

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise ID 83720-0074

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Mary S.Hobson
Stoel Rives
101 S Capitol Blvd, Ste 1900
Boise ID 83702

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Signed: 
Nina M. Curtis

later than 60 days after the month in which service is provided. ATG shall not be responsible for paying untimely bills. Should ATG dispute any portion of the monthly billing under this Agreement, ATG will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Both ATG and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. ATG shall notify USWC in the event that it does not receive a bill from USWC within 45 days of ordering the Service.

26.4.4 If ATG is repeatedly delinquent in making its payments, USWC may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to USWC in its sole discretion, or some other form of mutually acceptable security.

26.4.5 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to ATG's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by ATG. The fact that a deposit has been made does not relieve ATG from any requirements of this Agreement.

26.5 Taxes

Each Party purchasing services hereunder shall pay or otherwise be responsible for all applicable federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

26.6 Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military

**PAGING CONNECTION
AGREEMENT**

BETWEEN

U S WEST COMMUNICATIONS, INC.

AND

AIRTOUCH PAGING

Colorado

CDS-990506-0069

effort to resolve and settle the dispute prior to initiating any other rights or remedies. Each party shall pay all billed amounts when due, provided, however, that a Party may withhold (i) up to four months worth of disputed charges (not to exceed \$100,000 in the aggregate for all disputes should multiple disputes exist) pending resolution of such dispute, and (ii) any disputed amounts pertaining to reciprocal compensation for internet-related traffic. Should the dispute be resolved in the non-disputing Party's favor, the disputing Party shall pay the withheld amounts to the non-disputing Party within thirty days. Should the dispute be resolved in the disputing Party's favor, the non-disputing party will credit any paid disputed amounts against the disputing Party's succeeding monthly bills; provided, however, that if a credit balance remains for more than 3 months on an account, the non-disputing Party shall pay the credit balance in cash to the disputing Party. No late payment factor or charges, interest or other penalties shall apply to payments or credits made pursuant to the settlement of disputed amounts provided the payment or credit is made within 30 days following the resolution of the dispute.

- 12.4 If either Party is repeatedly delinquent in making payments, the other Party may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent in the payment of non-disputed amounts for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to the requesting Party in its sole discretion, or some other form of mutually acceptable security.
- 12.5 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to the depositing Party's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by the depositing Party. The fact that a deposit has been made does not relieve the depositing Party from any requirements of this Agreement.

13. MISCELLANEOUS TERMS

13.1. General Provisions

- 13.1.1. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and Emergency Preparedness Plan.
- 13.1.2. Each Party is solely responsible for the services it provides to its End Users and to other telecommunications carriers.
- 13.1.3. The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

13.2. Taxes

13.25. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

13.26. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC and shall, at times, be subject to review by the Commission or the FCC. The Parties shall cooperate in a good faith effort to secure, as soon as practicable, any required regulatory approvals of this Agreement.

13.27. Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

13.28 Further Assurances

Each Party shall at any time, and from time to time, upon the written request of the other Party, execute and deliver such further documents, and do such further acts and things as the other Party may reasonably request to effect the purposes of this Agreement. The Parties shall act in good faith and consistent with the intent of the Act in the performance of their obligations under this Agreement. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement (including, without limit, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

13.29 Section 252(i) Election

Paging Provider shall have the right under 47 U.S.C. Sections 252(i) to elect terms and conditions from other approved agreements consistent with 47 C.F.R. Section 809.¹⁶

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

AIRTOUCH PAGING

U S WEST Communications, Inc.

Signature

Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

January 11, 2000
Date

January 11, 2000
Date

¹⁶ AirTouch Order, Docket No. 99A-001T, Section I.B.8.

**TYPE 1 WIRELESS
INTERCONNECTION AGREEMENT**

BETWEEN

U S WEST COMMUNICATIONS, INC.

AND

ALAMOSA PCS, L.L.C.

FOR

COLORADO

22.2. Term of Agreement

This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act, shall terminate on October 31, 2002, and shall be finding upon the Parties during that term, notwithstanding Section 252 (i) of the Act. The Parties agree to commence negotiations on a new agreement no later than 135 calendar days prior to the termination date specified above; provided that Carrier, consistent with Section 252 (i) of the Act, may opt into a then-existing, valid interconnection agreement, in its entirety, at the conclusion of the said term of this Agreement. In the event that negotiations are not concluded as of the termination date specified above, the window of opportunity to file for arbitration to resolve outstanding contractual issues in accordance with the Act, will open upon the termination date specified above.

22.3. Payment

22.3.1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice. Billing and collection of usage charges by Carrier from its Customers shall have no bearing on the amount or timeliness of Carrier's payment obligation to USWC. USWC is solely responsible for making all Reciprocal Compensation Credits due to Carrier under this Agreement and the billing and collection of usage charged by USWC from its Customers shall have no bearing on the amount or timeliness of its credit obligations to Carrier.

22.3.2. Unless otherwise specified in this Agreement, any amount due and not paid by the due date stated above shall be subject to the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the Service is rendered.

22.3.3. Should Carrier dispute any portion of the monthly billing under this Agreement, including the Reciprocal Compensation Credit, Carrier will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Carrier shall pay all amounts due. Both Carrier and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be found in Carrier's favor, USWC will reimburse Carrier the resolved amount plus interest from the date of payment at the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the service is rendered.

22.3.4. If Carrier is repeatedly delinquent in making its payments, USWC may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to USWC in its sole discretion, or some other form of mutually acceptable security.

PAGING CONNECTION

AGREEMENT

BETWEEN

U S WEST COMMUNICATIONS, INC.

AND

**ARCH PAGING, INC. AND MOBILE COMMUNICATIONS
CORPORATION OF AMERICA**

Colorado

CDS-000616-0116

effort to resolve and settle the dispute prior to initiating any other rights or remedies. Each party shall pay all billed amounts when due, provided, however, that a Party may withhold (i) up to four months worth of disputed charges (not to exceed \$100,000 in the aggregate for all disputes should multiple disputes exist) pending resolution of such dispute, and (ii) any disputed amounts pertaining to reciprocal compensation for internet-related traffic. Should the dispute be resolved in the non-disputing Party's favor, the disputing Party shall pay the withheld amounts to the non-disputing Party within thirty days. Should the dispute be resolved in the disputing Party's favor, the non-disputing party will credit any paid disputed amounts against the disputing Party's succeeding monthly bills; provided, however, that if a credit balance remains for more than 3 months on an account, the non-disputing Party shall pay the credit balance in cash to the disputing Party. No late payment factor or charges, interest or other penalties shall apply to payments or credits made pursuant to the settlement of disputed amounts provided the payment or credit is made within 30 days following the resolution of the dispute.

- 12.4 If either Party is repeatedly delinquent in making payments, the other Party may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent in the payment of non-disputed amounts for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to the requesting Party in its sole discretion, or some other form of mutually acceptable security.
- 12.5 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to the depositing Party's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by the depositing Party. The fact that a deposit has been made does not relieve the depositing Party from any requirements of this Agreement.

13. MISCELLANEOUS TERMS

13.1. General Provisions

- 13.1.1. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and Emergency Preparedness Plan.
- 13.1.2. Each Party is solely responsible for the services it provides to its End Users and to other telecommunications carriers.
- 13.1.3. The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

13.2. Taxes

CMRS INTERCONNECTION AGREEMENT

(excluding paging services)

between

AT&T Wireless Services, Inc.

and

U S WEST Communications, Inc.

that will be consistent with the call detail information available from AWS upon request.

AWS will provide to USWC a monthly bill that will summarize the number of completed calls and minutes generated by USWC exchanges (as identified in the LERG and by USWC OCN) based upon the state and point of interconnection between AWS and USWC. Minutes of use will be aggregated monthly based on Conversation Time and will not be rounded to the next full minute. AWS will provide to USWC its first bill based on this system for the first full month after the Effective Date of this Agreement.

For purposes of billing the proportionate share of the Connecting Facilities, AWS may request that USWC apply the agreed-to factor, as discussed in Section 11.A(2), to the total of the Connecting Facilities, thus crediting the amount due from AWS to USWC. If a proportionate share of a third party facility is applicable to USWC, AWS shall at that time manually bill those charges to USWC.

- C. Invoices for Charges. Not later than fifteen (15) days following the end of each monthly billing cycle, the Parties shall deliver to each other an invoice reflecting the charges due from the other Party for facilities and usage attributable to the month covered by such billing cycle. Facilities charges will be billed in advance for the following period. Usage charges will be billed in arrears for the preceding period. All invoices shall be due and payable within thirty (30) days following the invoice date.
- D. Late Charges. If any portion of a payment due from a Party is received by the other Party after the required payment date, the portion of the payment unpaid shall be subject to a late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the Service is rendered.

If Parties are repeatedly delinquent in making its payments, Parties may, in their sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to the Parties in their sole discretion, or some other form of mutually acceptable security.

Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or tariffs. Cash deposits and accrued interest will be credited to the account of the Party that made the deposit or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full. The fact that a deposit has been made does not relieve Parties from any requirements of this Agreement.

**WIRELESS INTERCONNECTION
AGREEMENT - UTAH**

BETWEEN

QWEST CORPORATION

AND

AUTOTEL

payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the Service is rendered.

3. Should either Party dispute any portion of the monthly billing under this Agreement, that Party will notify the other Party in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. The Parties shall pay all undisputed amounts due. The Parties agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be found in Carrier's favor, Qwest will reimburse Carrier the resolved amount plus interest from the date of payment at the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the service is rendered.
4. If Carrier is repeatedly delinquent in making its payments, Qwest may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to Qwest in its sole discretion, or some other form of mutually acceptable security.
5. Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or tariffs. Cash deposits and accrued interest will be credited to Carrier's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by Carrier. The fact that a deposit has been made does not relieve Carrier from any requirements of this Agreement.

E. Taxes

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax

**TYPE 1 PAGING
AGREEMENT**

BETWEEN

U S WEST Communications, Inc.

AND

**Metro, Paging, MobilePhone, Communications Company
d.b.a. Metro Area User**

**AGREEMENT NUMBER
DEN-971121-1002**

17.2.2. This Agreement will terminate upon a revocation or other termination of either Party's governmental authority to provide the services contemplated by this Agreement. If the authority is temporarily suspended, delivery of traffic will cease only during the suspension if the suspended Party otherwise is and remains in full compliance under this Agreement.

17.3. Payment

17.3.1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice. Billing and collection of usage charges by Paging Provider from its customers shall have no bearing on the amount or timeliness of Paging Provider's payment obligation to USWC.

17.3.2. Unless otherwise specified in this Agreement, any amount due and not paid by the due date stated above shall be subject to the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the Service is rendered.

17.3.3. Should Paging Provider dispute any portion of the monthly billing under this Agreement, Paging Provider will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Paging Provider shall pay all amounts due, including amounts in dispute. Both Paging Provider and USWC agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be found in Paging Provider's favor, USWC will reimburse Paging Provider the resolved amount plus interest from the date of payment at the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the service is rendered.

17.3.4. If Paging Provider is repeatedly delinquent in making its payments, USWC may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to USWC in its sole discretion, or some other form of mutually acceptable security.

17.3.5. Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or tariffs. Cash deposits and accrued interest will be credited to Paging Provider's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by Paging Provider. The fact that a deposit has been made does not relieve Paging Provider from any requirements of this Agreement.

in reasonably resolving issues which result from such implementation on a timely basis.

17.33. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

**Metro, Paging, MobilePhone,
Communications Company
d.b.a. Metro Area User ***

U S WEST Communications, Inc. *

Signature

Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

Date

Date

- **Signature does not waive any rights of either Party to seek administrative/judicial review of all or part of the Agreement, or to reform the agreement as the result of successful administrative/judicial review and/or future settlement agreements between the Parties to this Agreement.**



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Form:S-1 Filing Date:11/22/1999

1

Exhibit 10.31

INTERIM

COLLOCATION AGREEMENT

AGREEMENT NUMBER

CDS-990616-0108

BETWEEN

U S WEST COMMUNICATIONS, INC.

DD-4 Page 19

AND

PATHNET, INC.

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COLLOCATION AGREEMENT

THIS COLLOCATION AGREEMENT ("Agreement") is made and effective as of August 12, 1999, by and between U S WEST Communications, Inc., a Colorado corporation ("USW"), and Pathnet, Inc., a Delaware corporation ("Pathnet").

WHEREAS, USW is an incumbent local exchange carrier having a statutory duty to provide for "Collocation" of equipment necessary for interconnection or access to unbundled network elements at its Premises, in accordance with the Telecommunications Act of 1996 (the "Act"); and

WHEREAS, Pathnet wishes to physically locate certain of its equipment within the Space (as defined herein) and connect with USW in accordance with the Act;

WHEREAS, Pathnet must have a state approved Interconnection agreement with USW in the states covered by this Agreement before Pathnet can order local interconnection trunks for the purpose of exchanging traffic between the Parties' networks.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, USW and Pathnet (the "Parties") agree as follows:

SECTION 1. TERM

This Agreement is prepared in order for USW to process Pathnet's Collocation requests for the states of Arizona, Colorado, Idaho, Iowa, Minnesota, Nebraska, New Mexico, North Dakota and Wyoming (other states can be requested through a general amendment to this contract) while the Parties finalize the Interconnection Agreement between USW and Pathnet ("Interconnection Agreement"). The Parties intend to submit the Interconnection Agreement to the state public utilities commissions having jurisdiction, for approval under the provisions of 47 U.S.C. Section 252. This Agreement will remain in effect until April 1, 2000, or until approval of that Interconnection Agreement, whichever occurs first. At such time of Commission approval of the Interconnection Agreement, this Agreement will terminate and the terms and conditions of the approved Interconnection Agreement will prevail. In the event the Interconnection Agreement is not approved by the Commission Pathnet shall vacate the Space and pay USW all of the expenses and costs that USW has incurred that have not been fully reimbursed to USW by the nonrecurring charges paid by Pathnet to USW. Pathnet shall have the option to convert cageless collocation to a virtual collocation in this event as defined under the FCC tariffs dealing with the USW Expanded Interconnection Services and shall pay charges for such conversion. USW shall not refund any sum paid to it by or on behalf of Pathnet.

SECTION 2. COLLOCATION DESCRIPTION

2.1 Collocation allows for the placing of telecommunications equipment owned by Pathnet within USW's Central Office for the purpose of accessing Unbundled Network Elements (UNEs) and/or terminating EAS/Local and ancillary traffic.

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2.1.1 Virtual Collocation

With a Virtual Collocation arrangement, Pathnet is responsible for the procurement of its own telecommunications equipment which USW installs and maintains. Pathnet does not have physical access to its equipment in the USW Central Office but will be granted access to the appropriate cross-connect for making any cross connections it may require for access to USW UNEs.

2.1.2 Caged Physical Collocation

Caged Physical Collocation allows Pathnet to lease caged floor space approximately in 100 square foot increments, up to a maximum of 400 square feet, for placement of its telecommunications equipment within USW's

through Friday, 8:00am to 5:00pm (local time) and after business hours are after 5:00pm and before 8:00am (local time), Monday through Friday, all day Saturday, Sunday and holidays.

20.1.2 Installation and maintenance of Pathnet's virtually collocated equipment will be performed by USW or a USW authorized vendor.

20.1.3 Upon failure of Pathnet's virtually collocated equipment, Pathnet is responsible for transportation and delivery of maintenance spares to USW at the Wire Center housing the failed equipment. Pathnet is responsible for purchasing and maintaining a supply of spares.

20.2 Caged Physical Collocation

Pathnet is solely responsible for the maintenance and repair of its equipment located within Pathnet's caged space. If two or more Co-Providers agree to a Shared Space Caged Physical Collocation arrangement, such collocators are solely responsible for any and all maintenance, security and repair arrangements necessitated by such sharing. USW assumes no liability for any damages of any kind relating to Shared Space Caged Physical Collocation or related personnel disputes among the parties to those arrangements.

20.3 Cageless Physical Collocation

Pathnet is solely responsible for the maintenance and repair of its equipment located within Pathnet's cageless physical space.

20.4 ICDF Collocation

Pathnet is responsible for block and jumper maintenance at the appropriate cross-connect device and using correct procedures to dress and terminate jumpers on the appropriate cross-connect device, including using fanning strips, retaining rings, and having jumper wire on hand, as needed. Additionally, Pathnet is required to provide its own tools for such operations.

SECTION 21. PAYMENT

21.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of invoice.

18

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21.2 Should Pathnet dispute, in good faith, any portion of the monthly billing under this Agreement, Pathnet will notify USW in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. Pathnet shall pay all amounts due. Both Pathnet and USW agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in Pathnet's favor and the resolved amount did not appear as a credit on Pathnet's next invoice from USW, USW will reimburse Pathnet the resolved amount plus interest from the date of payment. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it not been paid on time. Similarly, in the event Pathnet withholds payment for a disputed charge, and upon resolution of the matter it is determined that such payments should have been made to USW, USW is entitled to collect interest on the withheld amount, subject to the above provisions.

21.3 USW will determine Pathnet's credit status based on previous payment history with USW or credit reports such as Dun and Bradstreet. If Pathnet has not established satisfactory credit with USW or if Pathnet is repeatedly delinquent in making its payments, USW may require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) calendar days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a surety bond, a letter of credit with terms and conditions acceptable to USW or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ten (10) calendar days after demand in accordance with Commission requirements.

21.4 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to Pathnet's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or the establishment of satisfactory credit with USW, which will generally be

one full year of timely payments in full by Pathnet. The fact that a deposit has been made does not relieve Pathnet from any requirements of this Agreement.

21.5 USW may review Pathnet's credit standing and modify the amount of deposit required.

21.6 The late payment charge for amounts that are billed under this Agreement shall be in accordance with Commission requirements.

SECTION 22. TAXES

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these

19

21

amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied.

SECTION 23. INSURANCE

Pathnet shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain the insurance coverage listed below with insurers having a "Best's" rating of B+XIII.

23.1 Workers' Compensation with statutory limits as required in the state of operation; and Employers' Liability insurance with limits of not less than \$100,000 each accident.

23.2 Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage occurring or arising out of the use or occupancy of the premises, including coverage for independent contractor's protection (required if any work will be subcontracted), premises-operations, products and/or

DD-4 Page 24

SECTION 46. COMPLIANCE WITH THE COMMUNICATIONS ASSISTANCE LAW ENFORCEMENT ACT OF 1994 ("CALEA")

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

SECTION 47. COOPERATION

The Parties agree that this Agreement involves the provision of USW services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis.

SECTION 48. ENTIRE AGREEMENT

This Agreement and all exhibits, schedules, and amendments and supplements hereto and including, but not limited to any Adjacent Collocation Arrangements, constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

PATHNET, INC.

U S WEST COMMUNICATIONS, INC.

/s/ MICHAEL A. LUBIN

/s/ KATHY FLEMMING

Signature

Signature

Michael A. Lubin

Kathy Fleming

Name Printed/Typed

Name Printed/Typed

V.P. and General Counsel

V.P. Interconnect Implementation

Title

Title

8/16/99

8/18/99

Date

Date

30

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