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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 19 2004

GREGORY C. LANGHAM
CLERK

Civil Action No. 04-N-0909 (MJW)

QWEST CORPORATION,

Plaintiff,

v.

AT&T CORP.;
AT&T COMMUNICATIONS, INC.,
AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.,
AT&T COMMUNICATIONS OF THE MIDWEST, INC.,
AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC., and
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,

Defendants.

AT&T'S AMENDED ANSWER TO FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15, Defendants AT&T Corp., AT&T Communications, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., and AT&T Communications of the Southwest, Inc., (collectively, "AT&T"), by and through their attorneys, hereby submit their Amended Answer to the First Amended Complaint filed by Plaintiff Qwest Corporation ("Qwest").

AT&T herein responds to the First Amended Complaint filed by Qwest. Any allegation not specifically admitted is denied. AT&T states as follows:

JURISDICTION AND VENUE

1. This lawsuit was filed in part to collect charges due under tariffs filed with and approved by the FCC, and damages caused by the illegal acts of a common carrier subject to the

Communications Act of 1934, as amended. This lawsuit therefore arises under Sections 203 and 206 of the Communications Act of 1934, 47 U.S.C. §§ 203, 206, and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and 47 U.S.C. § 207. This Court has subject matter jurisdiction over Qwest's related state-law claims pursuant to 28 U.S.C. § 1367.

ANSWER NO. 1: AT&T admits that Qwest seeks to recover certain charges from AT&T, but denies the remaining allegations of the first sentence of paragraph 1. AT&T admits that this Court has jurisdiction over Qwest's claims pursuant to 28 U.S.C. §§ 1331, 1337 and 1367. AT&T denies the remaining allegations of paragraph 1.

2. Personal jurisdiction is appropriate in this district because a substantial part of the events and omissions giving rise to the claims in this Complaint occurred in this judicial district, AT&T's tortious acts caused Qwest to suffer damages in Colorado, AT&T has agents and property in Colorado, and AT&T routinely transacts business in this district. Fed. R. Civ. P. 4(k)(1)(A); Colo. Rev. Stat. § 13-1-124 (2004). The claims in this Complaint arise in part from these contacts with the State of Colorado.

ANSWER NO. 2: AT&T admits that a substantial portion of the events giving rise to the alleged claims occurred in this district and that certain of the defendants have agents and transact business in Colorado. AT&T denies the remaining allegations of paragraph 2. AT&T consents to personal jurisdiction in this Court.

3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to the claims in this Complaint occurred in this judicial district, and AT&T has agents and transacts business in this district.

ANSWER NO. 3: AT&T admits that a substantial portion of the events giving rise to the alleged claims occurred in this district and that certain of the defendants have agents and transact business in this district. AT&T denies the remaining allegations of paragraph 3. AT&T consents to venue in this district.

PARTIES

4. Qwest Corporation is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest is a "local exchange carrier" providing local (as opposed to long-distance) telephone services to customers throughout a fourteen-state territory comprised of the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

ANSWER NO. 4: AT&T admits the allegations of paragraph 4 on information and belief, except for the parenthetical. AT&T avers that Qwest also provides long-distance telephones services.

5. Defendant AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T provides, among other things, telecommunications services throughout the United States, including the State of Colorado. AT&T is a long-distance carrier, which means that it carries calls between local telephone exchanges, whether within one state ("intrastate") or between states ("interstate"). In the telecommunications industry, long-distance service is known as "interexchange" service, and long-distance carriers are known as "interexchange carriers." AT&T is a common carrier under the Communications Act of 1934.

ANSWER NO. 5: AT&T admits the allegations of the first, second and third sentences of paragraph 5. AT&T admits that the allegations of the fourth sentence of paragraph 5 are accurate in a general sense. AT&T admits that it provides some services as a common carrier under the Communications Act of 1934. AT&T denies the remaining allegations of paragraph 5.

6. Defendants AT&T Communications, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., and AT&T Communications of the Southwest, Inc., are all wholly-owned subsidiaries of AT&T Corp. These operating subsidiaries provide long-distance services on behalf of AT&T Corp., and they are common carriers under the Communications Act of 1934. As AT&T Corp.'s operating subsidiaries, these Defendants acted jointly with AT&T Corp. in establishing and carrying out AT&T's illegal scheme throughout Qwest's territory.

ANSWER NO. 6: AT&T admits the allegations of the first sentence. AT&T admits that these subsidiaries provide some services as common carriers under the Communications Act

of 1934. AT&T denies that the subsidiaries of AT&T Corp. "provide long-distance services on behalf of AT&T Corp." AT&T denies the remaining allegations of paragraph 6, and avers that AT&T Communications of the Southwest, Inc. does not provide any telecommunications services within Qwest's service territory.

STATEMENT OF FACTS

A. The Access Charge Regime

7. Since the breakup of the Bell System in 1984, local exchange carriers such as Qwest, and long-distance carriers such as AT&T, have played largely distinct roles in the telecommunications industry. Local exchange carriers have primarily carried local calls, while long-distance carriers have carried calls between local telephone exchanges.

ANSWER NO. 7: AT&T admits that the allegations of paragraph 7 are accurate in a general sense, but avers that Qwest is now the dominant provider of both local and interexchange services in its service areas. AT&T denies any remaining allegations of paragraph 7.

8. To provide interexchange telecommunications services, long-distance carriers such as AT&T typically must interconnect their long-distance networks with the local exchange networks that are actually connected to callers and called parties. For example, when a customer makes an interexchange call, that customer's local exchange carrier transports the call over the local exchange carrier's network to the network of the long-distance carrier that the customer has selected (here AT&T). This part of an interexchange call is known as the "originating" segment.

ANSWER NO. 8: AT&T admits that for most calls, long-distance carriers must be interconnected with the local exchange networks that are actually connected to the calling and called parties and that such interexchange calls typically "originate" on the calling party's local exchange carrier's network, but otherwise denies the allegations of paragraph 8.

9. The long-distance carrier then transports the call from the local telephone exchange where the calling party is located to the local telephone exchange where the person receiving the call is located. The called party's local exchange carrier receives the call from the

long-distance carrier, either directly or through an intermediary, and delivers it to the called party. This part of the call is the "terminating" segment.

ANSWER NO. 9: AT&T admits that most interexchange calls are "terminated" over the called party's local exchange carrier's network, but otherwise denies the allegations of paragraph 9 and, in particular, denies the allegations of paragraph 9 to the extent that Qwest directs them at the traffic at issue here, which is referred to as AT&T's "phone-to-phone IP telephony service" and which was converted to Internet Protocol ("IP") and transmitted over the Internet. AT&T denies the remaining allegations of paragraph 9.

10. Since the caller has caused the networks of the local exchange carrier on each end of the call to be used, and the interexchange carrier is the one who receives payment from the caller, federal and state law require the interexchange carrier to pay the local exchange carrier's "access charges" for the use of their networks as set forth in filed and approved tariffs. The caller's local exchange carrier receives "originating access" charges; the called party's local exchange carrier receives "terminating access" charges.

ANSWER NO. 10: The allegations of the first sentence of paragraph 10 state a conclusion of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T admits that access charges imposed by a calling party's local exchange carrier are often referred to as "originating access" charges and that access charges imposed by a called party's local exchange carrier are often referred to as "terminating access" charges, but otherwise denies the allegations of paragraph 9 and, in particular, denies that AT&T is liable for terminating access charges with respect to its phone-to-phone IP telephony service within the relevant time period. AT&T denies the remaining allegations of paragraph 10.

11. Federal and state tariffs filed by the local exchange carriers set the appropriate originating and terminating access charges for a given interexchange call, depending on whether the call is interstate or intrastate. If the call originates in one state and terminates in another, the access charges are set forth in interstate tariffs filed with the FCC. If the call originates and

terminates within the same state, the access charges that apply are set forth in intrastate tariffs filed with the relevant state regulatory commission. Access charges are set at levels designed to recover the costs of using the local exchange carrier's facilities to complete long-distance calls, as well as the overall costs of providing local telephone service.

ANSWER NO. 11: AT&T admits that local exchange carriers generally file with the FCC interstate tariffs that contain charges associated with interstate exchange access services and generally file with the relevant state regulatory commission intrastate tariffs that contain charges associated with the purchase of intrastate exchange access services. The allegations of the second and third sentences of paragraph 11 state conclusions of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T denies the remaining allegations of paragraph 11 and, in particular, denies the allegations to the extent that Qwest directs them at AT&T's phone-to-phone IP telephony services during the relevant time period.

B. AT&T Unlawful Evasion of Tariffed Access Charges

12. The access charges that large interexchange carriers such as AT&T must pay local exchange carriers amount to hundreds of millions of dollars each year.

ANSWER NO. 12: AT&T admits that it pays Qwest and other local exchange carriers billions of dollars each year for the exchange access services that it purchases from those carriers, but otherwise denies the allegations of paragraph 12.

13. Beginning as early as 2000 (and possibly even earlier) and continuing through the present, AT&T implemented a fraudulent scheme to avoid these tariffed access charges. To accomplish this, AT&T uses "Internet Protocol," a transmission method originally developed for transmitting data over the Internet, to transport certain calls over AT&T's network.

ANSWER NO. 13: AT&T denies the allegations of paragraph 13, but avers that AT&T did employ Internet Protocol in providing its phone-to-phone IP telephony service.

14. The scheme works generally as follows, in simplified form. An AT&T long-distance customer places a long-distance call in the usual manner—by dialing 1+ the called party's 10 digit telephone number from a regular telephone. After the call reaches AT&T's network, the call is converted to the Internet Protocol. AT&T then transports the call over its "Internet backbone" (a high capacity data transmission facility). The call is then changed back to the original telephone protocol before it is handed off to the terminating local exchange carrier (either directly or through an intermediary affiliate of AT&T) for delivery to the called party. Calls transmitted in this manner are delivered to the local exchange carrier through facilities that were acquired for use only for local telephone traffic rather than the facilities that are supposed to be used for interexchange call termination.

ANSWER NO. 14: AT&T denies the allegations of the first sentence of paragraph 14. AT&T admits that the allegations of the second, third, fourth and fifth sentences of paragraph 14 describe, in a general sense, the path followed by an AT&T phone-to-phone IP telephony service call. AT&T denies the remaining allegations of paragraph 14.

15. From the perspective of the caller and the called party, the call is dialed, received, and billed to the caller in the same manner as any other long-distance call. Customers do not know that the Internet Protocol is used to transport their long-distance calls.

ANSWER NO. 15: AT&T admits that AT&T's phone-to-phone IP telephony service calls were dialed and received over ordinary telephones and that AT&T billed its customers for such calls in the same manner that it billed them for other long-distance calls. AT&T admits that it did not inform its customers which calls were phone-to-phone IP telephony calls, but denies that it had any obligation to do so. AT&T denies the remaining allegations of paragraph 15.

16. From the perspective of AT&T, terminating access charges are eliminated. AT&T instead pays the lower rate for terminating local calls. AT&T's customers, however, are billed at the same rate as if the call is an ordinary long-distance call. AT&T retains the value of the access charges that it has avoided paying to local exchange carriers.

ANSWER NO. 16: AT&T denies the allegations of paragraph 16. AT&T avers that it did not pay terminating access charges with respect to its phone-to-phone IP telephony service, but denies that such charges applied to AT&T's phone-to-phone IP telephony service during the

relevant time period. AT&T further avers that it billed the customers of its phone-to-phone IP telephony service in the same manner as it did customers of its standard, circuit-switched long-distance service. AT&T denies any remaining allegations of paragraph 16.

17. From the perspective of Qwest and other terminating local exchange carriers, the long-distance nature of the calls is effectively concealed. AT&T therefore is not assessed the terminating access charges that should be charged for these calls.

ANSWER NO. 17: Denied.

18. AT&T intentionally concealed its long-distance calls as local calls knowing that Qwest would not be able to bill the appropriate access charges as a result. In certain cases AT&T acted in concert with another local exchange carrier to deliver long-distance traffic to Qwest in a manner that disguised the traffic as local calls so that access charges would not be imposed on AT&T. AT&T and these other local exchange carriers jointly established and carried out this illegal scheme, causing Qwest to incur damages as the proximate result.

ANSWER NO. 18: Denied.

19. As a result of AT&T's fraud and concealment, Qwest has been unable to bill AT&T for the terminating access charges to which Qwest is entitled under its lawful and binding tariffs. Among other things, the billing verification process established by the parties for access charges that is intended to identify and mutually resolve billing discrepancies requires AT&T to provide to Qwest accurate information about interexchange calls terminated by Qwest for AT&T.

ANSWER NO. 19: Denied.

20. Charges for local calls are significantly lower than tariffed terminating access charges for long-distance calls. In many instances Qwest and other local exchange carriers are paid nothing for terminating some calls under the compensation regime devised by AT&T.

ANSWER NO. 20: AT&T admits that Qwest charges significantly more to terminate calls pursuant to its exchange access tariffs than it charges to provide the same functionality pursuant to other tariffs or reciprocal compensation agreements. AT&T denies the remaining allegations of paragraph 20.

21. The FCC has long recognized that the choice of transmission technology makes no difference to the regulatory classification of a telephone call or the applicability of access charges. Under the FCC's longstanding rules, any interexchange call that begins and ends as an ordinary telephone call is subject to access charges regardless of the technology a carrier elects to use to facilitate its transmission.

ANSWER NO. 21: AT&T denies the allegations of paragraph 21, and further avers that, to the extent that those allegations refer to specific FCC actions, orders, pronouncements or rules, those actions, orders, pronouncements or rules speak for themselves and no response to those allegations is required.

22. Over time, certain local exchange carriers, such as Verizon and Sprint, began to discover that AT&T was unlawfully evading access charges. AT&T then revealed its scheme by seeking approval by the FCC. Specifically, in October 2002, AT&T filed a petition with the FCC requesting that it declare that a telephone call converted to Internet Protocol, transported to its destination, and then converted back to an ordinary telephone call for termination was exempt from access charges. (AT&T's Petition for Declaratory Ruling is attached as Exhibit A).

ANSWER NO. 22: AT&T denies the allegations of the first and second sentences of paragraph 22. AT&T admits that, on October 18, 2002, AT&T filed a petition with the FCC ("Petition") seeking a declaratory ruling with respect to its phone-to-phone IP telephony service. AT&T avers that the remaining allegations of paragraph 22 seek to characterize the Petition, which speaks for itself, and therefore no response to those allegations is required. AT&T denies any remaining allegations of paragraph 22.

23. Although AT&T's Petition claimed that it used the Internet Protocol format to avoid charges on only a small fraction of its interexchange traffic, AT&T has in fact avoided access charges on massive amounts of traffic in this manner.

ANSWER NO. 23: Denied.

24. On April 21, 2004, the FCC unanimously rejected AT&T's Petition and reaffirmed that AT&T's conversion of ordinary telephone traffic to Internet Protocol and back

again has no effect on the classification of the telephone call for the purpose of assessing access charges. In summary, the FCC found as follows:

End users place calls using the same method, 1+ dialing, that they use for calls on AT&T's circuit-switched long-distance network. Customers of AT&T's specific service receive no enhanced functionality by using the service. AT&T obtains the same circuit-switched interstate access for its specific service as obtained by other interexchange carriers, and, therefore, AT&T's specific service imposes the same burdens on the local exchange as do circuit-switched interexchange calls.

Order, In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, FCC 04-97 15 (April 21, 2004) (The Order is attached as Exhibit B). The FCC therefore reaffirmed that AT&T must pay access charges for all interexchange voice traffic that originates and terminates on local exchange networks under pre-existing law and current regulatory rules.

ANSWER NO. 24: AT&T admits that on April 21, 2004, the FCC issued an Order in WC Docket No. 02-361, FCC 04-97, which ruled on AT&T's Petition ("FCC Access Order"). The remaining allegations of paragraph 24 seek to characterize the FCC Access Order, which speaks for itself, and therefore no response is required. AT&T nevertheless states that the FCC Access Order was expressly limited to access charges on interstate and not intrastate calls, and the decision applied only prospectively and not retroactively. AT&T denies any remaining allegations of paragraph 24.

25. AT&T has no excuse for its failure to pay access charges for the interexchange voice traffic it transmits using Internet Protocol. This traffic is governed by the same federal and state access tariffs that apply to all other long-distance voice traffic. AT&T must therefore pay the full tariffed access rates for that traffic. AT&T has failed to do so, and it owes Qwest at least tens of millions of dollars in access charges.

ANSWER NO. 25: Denied.

FIRST CLAIM FOR RELIEF

Breach of Federal Tariffs

26. Qwest incorporates the preceding paragraphs of the Complaint as if set forth here.

ANSWER NO. 26: AT&T incorporates its responses to the allegations of the preceding paragraphs of the Complaint as if fully set forth herein.

27. Qwest's interstate access charges for long-distance calls are set forth in federal tariffs filed with and approved by the FCC. These tariffs carry the force of law, and they control over any other agreements among the parties.

ANSWER NO. 27: AT&T admits that Qwest has filed with the FCC tariffs that contain charges for interstate access services. The allegations of the second sentence of paragraph 27 state a conclusion of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T denies the remaining allegations of paragraph 27.

28. Qwest's federal tariffs provide, among other things, that AT&T must pay Qwest interstate originating and terminating access charges. Qwest is legally bound to charge the tariffed rate and AT&T is legally bound to pay it.

ANSWER NO. 28: The allegations of the second sentence of paragraph 28 state conclusions of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T denies the remaining allegations of paragraph 28.

29. Qwest fully or substantially performed its obligations under its federal tariffs, except for those it was prevented from performing, those that it was excused from performing, or those that were waived by AT&T's misconduct.

ANSWER NO. 29: Denied.

30. AT&T materially violated Qwest's federal tariffs by failing to pay the tariffed rates for the access services it used.

ANSWER NO. 30: Denied.

31. Qwest has not filed a claim to recover these charges with the FCC.

ANSWER NO. 31: AT&T admits the allegations of paragraph 31 on information and belief.

32. Qwest has been damaged in an amount to be determined at trial.

ANSWER NO. 32: Denied.

SECOND CLAIM FOR RELIEF

Breach of State Tariffs

33. Qwest incorporates the preceding paragraphs of the Complaint as if set forth here.

ANSWER NO. 33: AT&T incorporates its responses to the allegations the preceding paragraphs of the Complaint as if fully set forth herein.

34. Qwest's intrastate access charges for long-distance calls are set forth in tariffs filed with and approved by the appropriate regulatory bodies in each of the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. These tariffs carry the force of law.

ANSWER NO. 34: AT&T admits that Qwest has filed with state regulatory bodies in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming tariffs that contain charges for intrastate access services. The allegations of the second sentence of paragraph 34 state a conclusion of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T denies the remaining allegations of paragraph 34.

35. Each of these tariffs provide, among other things, that AT&T must pay Qwest intrastate originating and terminating access charges. Qwest is legally bound to charge the tariffed rates and AT&T is legally bound to pay them. The tariffs control over any other agreements among the parties.

ANSWER NO. 35: The allegations of paragraph 35 state conclusions of law, and AT&T avers that conclusions of law are for the Court to reach. AT&T denies the remaining allegations of paragraph 35.

36. Qwest fully or substantially performed its obligations under its state tariffs, except for those it was prevented from performing, those that it was excused from performing, or those that were waived by AT&T's misconduct.

ANSWER NO. 36: Denied.

37. AT&T materially violated Qwest's state tariffs by failing to pay the tariffed rates for the services it used.

ANSWER NO. 37: Denied.

38. Qwest has been damaged in an amount to be determined at trial.

ANSWER NO. 38: Denied.

THIRD CLAIM FOR RELIEF

Alternative Claim for Unjust Enrichment

39. Qwest incorporates the preceding paragraphs of the Complaint as if set forth here.

ANSWER NO. 39: AT&T incorporates its responses to the allegations the preceding paragraphs of the Complaint as if fully set forth herein.

40. This claim for relief is pleaded solely in the alternative, in the unlikely event the previously discussed tariffs are determined not to apply.

ANSWER NO. 40: The allegations of paragraph 40, as crafted, are unanswerable. To the extent that a response is required, AT&T denies the allegations of paragraph 40.

41. By terminating interexchange calls carried by AT&T to Qwest's local telephone customers, Qwest permitted AT&T's long-distance subscribers to complete long-distance calls.

ANSWER NO. 41: AT&T admits that Qwest delivered calls initiated by AT&T's long distance customers to Qwest local exchange service customers, but denies the remaining allegations of paragraph 41.

42. AT&T's long-distance customers compensated AT&T for completing their long-distance calls. Qwest thereby conferred a benefit on AT&T.

ANSWER NO. 42: AT&T denies the allegations of paragraph 42. AT&T avers that to the extent Qwest's completion of calls initiated by AT&T long distance customers conferred a benefit upon AT&T, AT&T did not receive such benefit unjustly, illegally or improperly and Qwest received full compensation for the services it provided.

43. AT&T understood that Qwest's termination of interexchange calls was important to AT&T's long-distance customers, and AT&T accordingly appreciated and recognized that Qwest's termination of interexchange calls conferred a benefit on AT&T.

ANSWER NO. 43: AT&T denies the allegations of paragraph 43. AT&T avers that to the extent Qwest's completion of calls initiated by AT&T long distance customers conferred a benefit upon AT&T, AT&T did not receive such benefit unjustly, illegally or improperly and Qwest received full compensation for the services it provided.

44. AT&T accepted and retained the benefit of Qwest's call termination services.

ANSWER NO. 44: AT&T admits that it accepted and retained the benefit of the services it actually purchased from Qwest, but denies the allegations of paragraph 44 to the

extent that they suggest that AT&T received benefits unjustly, illegally or improperly, and avers that Qwest received full compensation for the services it provided to AT&T.

45. It would be unjust to permit AT&T to accept and retain the benefit of Qwest's call termination services without compensating Qwest as required by law.

ANSWER NO. 45: Denied.

46. Qwest has been damaged in an amount to be determined at trial.

ANSWER NO. 46: Denied.

FOURTH CLAIM FOR RELIEF

Fraudulent Misrepresentation & Concealment

Contemporaneously with the filing of this Answer to First Amended Complaint, AT&T has filed a motion to dismiss Qwest's Fourth Claim for Relief pursuant to Rules 12(b)(6) and 9(b). Accordingly, no response to the allegations in this Claim for Relief is required at this time.

FIFTH CLAIM FOR RELIEF

Breach of Contract

59. Qwest incorporates the preceding paragraphs of the Complaint as if set forth here.

ANSWER NO. 59: AT&T incorporates its responses to the allegations the preceding paragraphs of the Complaint as if fully set forth herein.

60. In 1992, AT&T and Qwest's predecessor in interest, US WEST, entered into an Access Billing Supplier Quality Certification Operating Agreement, as amended, and various related agreements and addenda (collectively "Operating Agreement").

ANSWER NO. 60: Admitted.

61. The Operating Agreement is expressly subordinate to Qwest's access Service tariffs and is intended only to establish a process for (a) preventing, identifying, and resolving routine billing discrepancies, and (b) determining the appropriate state and federal tariff rates to be applied to AT&T's interexchange traffic.

ANSWER NO. 61: Denied.

62. Among other things, the Operating Agreement requires AT&T to provide Qwest with certain information about its interexchange telecommunications traffic. This information, which is in the possession and control of AT&T, is necessary for Qwest to accurately bill AT&T for access charges under the appropriate state and federal tariffs.

ANSWER NO. 62: To the extent that the allegations of the first sentence of paragraph 62 seek to characterize the Operating Agreement between AT&T and Qwest, that agreement speaks for itself, and therefore no response to those allegations is required. AT&T denies the remaining allegations of paragraph 62.

63. Qwest has a reasonable expectation under the Operating Agreement that AT&T will accurately disclose the necessary information about its long-distance calls that terminate over Qwest's local exchange network.

ANSWER NO. 63: Denied.

64. AT&T concealed and misrepresented the true nature of long-distance telephone calls passed from its network to Qwest through the use of its "IP-in-the-middle" routing.

ANSWER NO. 64: Denied.

65. AT&T's failure to disclose the true nature and amount of interexchange traffic that it terminated using Qwest's local exchange facilities interfered with Qwest's benefit under the Operating Agreement, and constitutes a breach of the Operating Agreement.

ANSWER NO. 65: Denied.

66. AT&T's concealment and misrepresentation that long-distance telephone calls were local calls through use of its "IP-in-the-middle" technology constitutes a material breach of

the express terms of the Operating Agreement which requires AT&T to provide accurate information about its interexchange traffic that originates and/or terminates on Qwest's network.

ANSWER NO. 66: Denied.

67. The conduct described in this Complaint is neither honest in fact nor consistent with reasonable commercial standards of good faith. On information and belief, AT&T's concealment and misrepresentation that long distance telephone calls are local calls through use of its "IP-in-the-middle" technology caused a distortion in the factors used to determine the appropriate rates to be applied to the traffic and works to deprive Qwest of the benefit of its bargain under the Operating Agreement, and thereby constitutes a material breach of the implied covenant of good faith and fair dealing that is part of the Operating Agreement.

ANSWER NO. 67: Denied.

68. AT&T's breach of the Operating Agreement and breach of the implied covenant of good faith and fair dealing have damaged Qwest in an amount to be determined at trial.

ANSWER NO. 68: Denied.

ANSWER TO REQUESTS FOR RELIEF

AT&T denies that Qwest is entitled to any of the relief it seeks.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Qwest's First Amended Complaint is barred because it fails to state claims upon which relief can be granted.

Second Affirmative Defense

Qwest expressly waived and released all claims asserted in the First Amended Complaint and discharged AT&T from all liabilities for access charges. As Qwest alleges on paragraph 60 of the First Amended Complaint, AT&T and Qwest (through its predecessor U S West) are parties to an Access Billing Supplier Quality Certification Operating Agreement dated October 5, 1992 (as amended), which incorporates the parties' Bill Period Closure Agreement and Supplements thereto. The Agreement establishes a "closure" process for the parties to reach final agreement in each bill period for access charges. The closure for each bill period is documented by a Bill Period Closure Agreement Supplement. Except for issues that the parties agree in writing to exempt from closure, as "documented on the Bill Period Closure Agreement Supplement, . . . U S West does hereby waive, release, acquit and forever discharge AT&T from any and all billing disputes, demands, obligations, and liabilities whatsoever that U S West has asserted or could have asserted against AT&T for access services provided to AT&T by U S West for all periods prior to and including the specific billing period due for closure, as set forth in the Bill Period Closure Agreement Supplement." Qwest has in fact executed a Bill Period Closure Agreement Supplement applicable to every bill period prior to the FCC Access Order on April 21, 2004 without ever exempting any claims relating to AT&T's phone-to-phone IP telephony service.

Third Affirmative Defense

Qwest's First Amended Complaint is barred by the doctrine of accord and satisfaction.

Fourth Affirmative Defense

Qwest's First Amended Complaint is barred to the extent that the claims are outside the applicable statutes of limitations.

Fifth Affirmative Defense

Qwest's request for retroactive damages is barred because such retroactive recovery would be inequitable and unlawful.

Sixth Affirmative Defense

Qwest's First Amended Complaint is barred by the doctrines of laches, unclean hands and in pari delicto.

Seventh Affirmative Defense

Qwest's First Amended Complaint is barred by the doctrines of waiver and estoppel.

Eighth Affirmative Defense

Qwest's First Amended Complaint is barred because it is foreclosed and preempted by the federal statutory requirement that charges for the transport and termination of telecommunications be cost-based.

Ninth Affirmative Defense

Qwest's First Amended Complaint is barred because Qwest's attempt to collect access charges for past periods constitutes an unjust and unreasonable practice in violation of the Communications Act and state law.

WHEREFORE, AT&T prays that Qwest take nothing by this suit.

AT&T hereby demands a jury trial on all issues and claims so triable.

COUNTERCLAIMS OF AT&T

AT&T, for its Counterclaims against Qwest, states as follows:

JURISDICTION

1. These Counterclaims were filed in part to collect damages caused by illegal acts of Qwest, a common carrier subject to the Communications Act of 1934, as amended by the Telecommunications Act of 1996. This lawsuit therefore arises under Section 206 of the Communications Act of 1934, 47 U.S.C. § 206, and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and 47 U.S.C. § 207. This Court has subject matter jurisdiction over AT&T's related state-law claims pursuant to 28 U.S.C. § 1367.

PARTIES

2. Counterclaim-Plaintiff AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T and its subsidiaries provide, among other things, telecommunications services throughout the United States, including the State of Colorado. AT&T provides both local and long-distance services. AT&T is a common carrier under the Communications Act of 1934.

3. Counterclaim-Plaintiffs AT&T Communications, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of the Midwest, Inc., and AT&T Communications of the Mountain States, Inc., are all wholly-owned subsidiaries of AT&T Corp. These operating subsidiaries provide local and long-distance services, and they are common carriers under the Communications Act of 1934.

4. Counterclaim-Defendant Qwest Corporation is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest is a "local exchange carrier" providing local telephone services to customers throughout a fourteen-state territory comprised of the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Qwest also provides long-distance services in these states. Qwest is a common carrier under the Communications Act of 1934.

BACKGROUND

To The Extent That They Are Deemed Applicable To AT&T's Phone-to-Phone IP Telephony Services, Qwest's Access Tariffs And Access Charges And Its Attempts To Impose Those Charges Are Unjust, Unreasonable And Discriminatory In Violation Of The Communications Act And State Law

5. Qwest seeks, through this proceeding, to collect millions of dollars in access charges with respect to phone-to-phone IP telephony service calls that AT&T delivered to Qwest during the past several years. AT&T delivered those calls to Qwest for completion to the called parties either via business lines ordered from Qwest or through reciprocal compensation trunks. AT&T paid all applicable charges for Qwest's completion of those calls, pursuant to the applicable Qwest state-filed tariffs and state-approved interconnection agreements. Qwest now contends that AT&T should have paid the higher access charges set forth in Qwest's federal and state access tariffs with respect to the phone-to-phone IP telephony service calls at issue. In particular, Qwest alleges that it is entitled to maintain a collection action for access charges under various state and federal access tariffs. *See* 1st Am. Compl. ¶¶ 26-38 (First and Second Claims for Relief).

6. AT&T denies that it has any liability to Qwest under Qwest's federal and state access tariffs in connection with the phone-to-phone IP telephony service calls that Qwest terminated pursuant to other tariffs and contract arrangements. In the event it is determined that these calls are subject to access charges under Qwest's federal and state access tariffs, however, AT&T counterclaims that any federal and state access tariff provisions determined to require AT&T to pay access charges on the past period phone-to-phone IP telephony service calls that are the subject of this lawsuit are unjust, unreasonable and discriminatory in violation of the federal Communications Act and state law. Among other things, it would be unjust, unreasonable and discriminatory for Qwest to collect access charges under its tariffs when Qwest has not issued any bills for such charges to AT&T (as required by its own access tariffs as a condition precedent to payment obligations), AT&T has not refused to pay such bills, Qwest had offered AT&T service under different federal and state tariffs that do not require payment of access charges and accepted, without protest, AT&T's payments for those different services, AT&T relied upon these arrangements to make substantial investments in infrastructure, AT&T complied in all material respects with the terms of the tariffs and contracts under which it exchanged this traffic with Qwest, Qwest has entered into agreements resolving in relevant part all billing disputes regarding these retroactive access charges, Qwest has not (until years after the fact) sought retroactive payment of access charges under its federal and state access tariffs, and Qwest has itself utilized arrangements other than federal and state access tariffs to have its own phone-to-phone IP telephony traffic delivered by other carriers and, indeed, has publicly advocated the lawfulness of these other arrangements.

7. Qwest is a common carrier, public utility and public service corporation within the meaning of the Communications Act and state law, respectively, and it acts in these capacities to the extent it provides access services to AT&T.

8. Sections 201 and 202 of the Communications Act and analogous state statutes deem illegal all “unjust” “unreasonable” and “discriminatory” charges and practices by common carriers. *See, e.g.*, 47 U.S.C. §§ 201, 202; Arizona Revised Statutes §§ 40-361(A) (“Every unjust or unreasonable charge demanded or received [by a public service corporation] is prohibited and unlawful”) and 40-334(A) (“A public service corporation shall not . . . make or grant any preference or advantage . . . or subject any person to any prejudice or disadvantage”); Colorado Revised Statutes Annotated §§ 40-3-101(1) (“All charges . . . by any public utility for . . . any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made . . . for such . . . service is prohibited and declared unlawful”) and 40-3-106(1)(a) (“no public utility . . . shall make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage”); Minnesota Statutes §§ 237.06 (“All unreasonable rates, tolls, and charges [of a telephone company] are hereby declared to be unlawful”) and 237.60 (“no telephone company shall offer telecommunications service . . . upon terms that are unreasonably discriminatory”). Retroactive imposition and collection of access charges under the circumstances presented here would be unjust, unreasonable and discriminatory in violation of these laws, and Qwest’s access charge tariff provisions are unjust, unreasonable and discriminatory to the extent that they are deemed to apply to the phone-to-phone IP telephony service calls at issue in this case.

**Qwest's Secret Discrimination In Favor Of Other Carriers In Violation Of The
Communications Act And State Law**

9. This case involves misconduct by Qwest in entering into "secret agreements" by which Qwest gave certain favored carriers special discounts on monopoly services to buy their silence in state and federal regulatory proceedings. A number of regulatory bodies have, in published decisions, ruled that (i) Qwest engaged in this misconduct, (ii) in doing so, Qwest violated federal and state law, (iii) Qwest's secret deals harmed competition, and (iv) the secret deals harmed AT&T and other competitors who did not receive the special discounts.

10. Congress has long recognized that Qwest and other incumbent local exchange carriers ("ILECs"), as owners of the bottleneck local telephone facilities, have the power and incentive to use their control over those facilities to block competition in local and long-distance telephone markets. Accordingly, in the Communications Act of 1934, as later amended by the Telecommunications Act of 1996 (collectively "the Act"), Congress included several statutory safeguards. At the core of these competitive safeguards are requirements that the ILECs file with state and federal regulators the terms and conditions under which the ILECs deal with competitors and that the ILECs make those same terms available to other carriers on a nondiscriminatory basis.

11. Numerous investigations by state and federal regulators – many of which are still ongoing – have established that Qwest has thwarted these statutory requirements by entering into agreements that offered certain favored competitors better terms and conditions than Qwest offered to other competitors. Such discriminatory conduct is prohibited by the Act. *See e.g.*, 47 U.S.C. §§ 202 and 251 (prohibiting "discriminatory" conduct).

12. Qwest attempted to hide this discriminatory conduct from state and federal regulators by engaging in more unlawful activity. Qwest kept its secret interconnection agreements hidden, in violation of the Act's filing requirements, which provide that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." 47 U.S.C. § 252(e)(1); *see also* 47 U.S.C. § 203(a), 252(a)(1).

13. Qwest used these secret agreements to "subvert [other aspects of] the regulatory process." Order Assessing Penalties, *Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, 2003 Minn. PUC LEXIS 19, **15-16 (2003) ("*Minnesota Penalty Order*"). Qwest offered the secret agreements to carriers that agreed not to interfere with Qwest's attempts to obtain regulatory approval to provide long-distance services. By purchasing competitors' silence, Qwest attempted to ensure that parties best able to inform state and federal regulators of Qwest's failure to satisfy legal obligations did not reveal Qwest's violations.

14. Although numerous state and federal regulators have now uncovered Qwest's unlawful conduct, and have fined Qwest tens of millions of dollars, AT&T has not been compensated for the damage it suffered as a result of that misconduct. Accordingly, this counterclaim seeks damages in an amount to be determined at trial, punitive or exemplary damages in an amount determined at trial, attorney's fees and costs to the extent authorized by law or tariff, pre-judgment interest, and such other relief as the Court deems appropriate.

15. To provide long distance service to their customers, AT&T and other long-distance carriers often must rely upon the local telephone networks owned by Qwest and the other Bell

Operating Companies ("BOCs"). Qwest offers a number of services, pursuant to tariff or contract, for the use of its local facilities. This counterclaim involves illegal secret discounts that Qwest provided on "exchange access" services.

16. AT&T paid Qwest hundreds of millions of dollars for interstate and intrastate access services during the periods in which Qwest was offering secret discounts to other exchange access customers.

17. The Act includes numerous provisions that prohibit Qwest from secretly favoring particular carriers. *E.g.*, 47 U.S.C. §§ 203, 252. Furthermore, Qwest's charges must be "just and reasonable" and "nondiscriminatory." *E.g.*, 47 U.S.C. §§ 201, 202, 251.

18. Qwest violated these and other provisions of the Act by entering into "secret agreements" with certain carriers that provided those carriers with more favorable terms and prices for all Qwest services, including exchange access services, than it offered to other carriers. Among the favored carriers were Eschelon and McLeod.

19. Qwest knew that these discriminatory agreements violated the Act. To conceal its unlawful conduct, Qwest violated other provisions of the Act that require Qwest to file all such interconnection agreements with state and federal regulators. 47 U.S.C. §§ 203, 252(a)(1), 252(e)(1); *see also* Memorandum Opinion and Order, *Qwest Communications International Inc. Petition For Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (2002).

20. By purchasing carriers' silence with favorable terms in secret agreements, Qwest sought to assure that state regulators and the FCC would not become aware of Qwest's failures to meet regulatory obligations. One state commission has likened Qwest's secret agreement arrangements to "bribing potential witnesses not to report what they saw to an administrative body." *Minnesota Penalties Order*, at *16.

21. State commissions, including Minnesota, Arizona, Colorado, New Mexico, and Washington have determined (either finally or provisionally) that Qwest "knowingly and intentionally" violated its legal obligations with the intent of "subverting the regulatory process," and undermining provisions of the 1996 Act that are "[c]entral to the fair development of competition in the local telephone market," *Minnesota Penalties Order*, at **16-17. State commissions and the FCC have imposed (or proposed) large fines against Qwest for this unlawful conduct. However, Qwest has not compensated AT&T and other competitors for damages incurred as a result of Qwest's unlawful conduct.

22. The secret agreements that have been uncovered by states and the FCC so far were "regional" in nature in that the terms of the agreements generally applied to every state where Qwest and the favored CLEC provided service. Just last year, the Minnesota Public Utilities Commission ("MPUC"), which is the Minnesota state agency with jurisdiction over Qwest and other telecommunications carriers in Minnesota, determined that Qwest "knowingly and intentionally violated federal law" by executing 12 interconnection agreements – eleven written agreements and one oral agreement – giving certain carriers preferable terms and conditions and not submitting the interconnection agreements to the MPUC for review and approval. *Minnesota*

Penalties Order, at *8. The MPUC ordered a fine of \$25.95 million. *Id.*, at *7. Qwest has sought review in federal district court of the remedies ordered by the MPUC, but Qwest has not appealed the MPUC's factual findings regarding its failure to file interconnection agreements.

23. The MPUC found, among other things, that Qwest's secret agreements included terms that provided certain CLECs with 10% discounts (depending on purchase volumes) on *all* purchases made by the CLEC from Qwest, including interstate and intrastate exchange access services; 10% discounts on *all* existing billed charges, including charges for interstate and intrastate exchange access services; a "sham" consulting arrangement intended to conceal the discounts; and agreements by the other parties not to oppose either Qwest's Section 271 application. *Minnesota Penalties Order*, at **27-42.

24. The MPUC confirmed that "Qwest's making secret deals with selected CLECs strikes to the heart of the government's determination to protect developing local competition." *Minnesota Penalties Order*, at **15-16. It is "[c]entral to the [1996 Act's scheme promoting] fair development of competition in the local telephone market . . . that the terms and conditions that the incumbent carrier (Qwest) makes available to any local telephone provider will be made available across-the-board to all local service providers." *Id.* at **15. Moreover, "Qwest's secret deals . . . sought to subvert the regulatory process by buying the silence of certain CLECs on matters before the [MPUC] (Qwest's [long-distance] application) and the FCC (Qwest's [federal long-distance] application)." *Id.* at *17.

25. The MPUC concluded that Qwest's unlawful conduct clearly damaged AT&T and other "unfavored" carriers. As one example, the MPUC recognized that the "CLECs not getting

the 10% discount obviously could not offer their products at a price reflecting that discount.” *Minnesota Penalties Order*, at * 18. “They were, therefore, at a competitive disadvantage vis-à-vis the favored [carriers that received the 10% discount]” *Id.* “This discriminatory treatment hurt both the unfavored [carriers] and their customers.” *Id.* Likewise, the carriers “not receiving the 10% discount were inhibited from expanding their local marketing efforts and potentially discouraged from entering the Minnesota local market, thereby reducing customer choice.” *Id.* at **18-19.

26. The MPUC’s investigation into Qwest’s secret agreements sparked a series of other investigations in Arizona, New Mexico, Washington, and Colorado relating to Qwest’s propensity to enter into secret, all of which are still ongoing. During the Arizona investigations, Qwest initially asserted its innocence, and, for example, denied claims that Qwest had entered into oral secret deals, stressing that no findings had (at that time) been made in the Minnesota proceeding, and attacked the credibility and veracity of the witnesses that admitted oral agreements with Qwest. It was later found that “[b]y intentionally failing to file its agreements with Eschelon and McLeod that gave those two CLECs discounts on all of their purchases . . . , and which granted escalation procedures and favorable provisioning procedures not given to other carriers, Qwest willfully and intentionally violated [federal and state statutes].” Decision No. 66949, *In the Matter of US West Communications, Inc.’s Compliance with §271 of the Telecommunications Act of 1996*, Docket Nos. T-00000A-97-0238, RT-00000F-02-271, T-01051 B-02-087, ¶ 38, p. 51 (Arizona Corporation Commission April 30, 2004).

27. The New Mexico Public Regulatory Commission ("NMPRC") likewise has found that Qwest violated the federal interconnection agreement filing requirements, and that the secret agreements discriminated against the carriers that were not a party to them. The NMPRC proceeding is ongoing.

28. The Colorado Public Utilities Commission ("CPUC") has also opened an investigation into Qwest's secret deals with favored CLECs. In the first phase of the proceeding the CPUC considered whether the secret agreements were in fact "interconnection agreements" under the Act, and thus subject to the filing requirements. The FCC has since answered that question, finding that Qwest's secret agreements were, in fact, interconnection agreements. *See Memorandum Opinion and Order, Qwest Communications International Inc. Petition For Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, 17 FCC Rcd. 19337 (2002). The CPUC then proceeded to investigate potential remedies and other issues related to Qwest's failure to file the interconnection agreements. That investigation is under way.

29. Last August, the Washington Utilities and Transportation Commission ("WUTC") initiated a proceeding against Qwest relating to the secret deals. On February 12, 2004, the WUTC made its initial findings that the secret agreements were in fact interconnection agreements that Qwest was required to file pursuant to the 1996 Act. That proceeding is still underway.

30. The Federal Communications Commission weighed in on March 12, 2004, issuing a "Notice of Apparent Liability" (or "NAL") against Qwest "for willfully and repeatedly violating

its statutory obligations . . . by failing to file 46 interconnection agreements with” state commissions. Notice of Apparent Liability, *Qwest Corporation, Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263, ¶ 1 (rel. Mar. 12, 2004). The FCC proposed a forfeiture amount of \$9 million against Qwest, noting that “a forfeiture of such size against Qwest [is appropriate] because of Qwest’s disregard for the filing requirements . . . of the Act and the [FCC’s] orders and the potential anticompetitive effects of Qwest’s conduct.” *Id.* ¶ 2. The FCC emphasized that “Qwest’s failure to comply with [the filing requirements] of the Act undermines the effectiveness of the Act and our rules by preventing competit[ors] . . . from adopting interconnection terms otherwise available only to certain favored [competitors].” *Id.*

31. The FCC first became aware that Qwest had entered into secret agreements when Qwest filed an application with the FCC seeking approval to enter the long-distance market in several states in Qwest’s territory. Recognizing that its failure to file these agreements would be fatal to its application, Qwest filed a “Petition for Declaratory Ruling” with the FCC, seeking an FCC ruling that Qwest was not required to file such agreements. But, as noted, the FCC rejected Qwest’s arguments. Thus, in order to obtain long-distance approval from the FCC, Qwest ultimately filed dozens of secret agreement with state commissions, and “assured [the FCC] that it had filed all of its previously unfiled interconnection agreements.” NAL, ¶ 2.

32. The FCC’s NAL stated that Qwest’s strategy was to withhold all secret agreements from each state commission until just before Qwest sought FCC approval to enter the long-distance market in that state. *Id.* ¶ 29. Then, just prior to filing its long-distance application, Qwest filed some secret agreements, but withheld other secret agreements. *Id.*

33. Qwest entered into secret deals that provided certain carriers with far better terms for access services – savings of at least 10% – compared to other carriers. In so doing, Qwest violated numerous provisions of the Act, including 47 U.S.C. §§ 203 and 251 (which require Qwest to file all such agreements with the either state or federal regulators) and 47 U.S.C. §§ 201, 202, 203 and 251 (which prohibit “unjust” “unreasonable,” and “discriminatory” rates or practices). Qwest further “subverted” the section 271 (long-distance entry) regulatory process. 47 U.S.C. § 271.

34. Qwest’s unlawful conduct caused substantial harm to AT&T and the other carriers that were not parties to the favorable terms contained in Qwest’s secret deals. *See, e.g., Findings of Fact, Conclusions, Recommendation and Memorandum, In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197, at 46 (Sept. 20, 2002)* (“[I]t is certain that damages would amount to several million dollars for Minnesota alone”). For example, AT&T was forced to pay higher prices for exchange access services to Qwest’s local telephone network than its competitors, placing AT&T at a competitive disadvantage vis-à-vis these competitors in long-distance markets. AT&T also was unable to exercise its statutory right to “opt into” such favorable terms pursuant to 47 U.S.C. § 252(i), which increased AT&T’s exchange access costs by 10%. AT&T also has lost numerous long-distance customers to Qwest, which likely gained regulatory approval to provide long-distance service prematurely by denying regulators access to information that may have resulted in denying such applications. Moreover, by increasing AT&T’s costs relative to AT&T’s competitors, Qwest’s secret deals have cost AT&T good will with customers. And by effectively

increasing AT&T's costs by 10% relative to its competitors, AT&T lost the opportunity to offer additional services to its customers at even lower prices.

35. The full extent of Qwest's unlawful conduct is still unknown, as states continue to investigate and uncover Qwest's secret deals.

FIRST CLAIM FOR RELIEF
(Violating 47 U.S.C. §§ 201, 202)

36. AT&T incorporates the preceding paragraphs of the Counterclaims as if set forth here.

37. Under federal law, unjust, unreasonable and discriminatory tariff provisions are unlawful. Moreover, it is unlawful for a common carrier to impose unjust, unreasonable or discriminatory charges or to engage in unjust, unreasonable or discriminatory practices, including unjust or unreasonable applications of its tariffs. 47 U.S.C. §§ 201, 202. To the extent, they are deemed to require payment of access charges on the past period phone-to-phone IP telephony service calls at issue in this case, the federal access tariff provisions that Qwest asserts here are unjust, unreasonable and discriminatory and impose unjust, unreasonable and discriminatory charges in violation of the Communications Act. Retroactive imposition of access charges under Qwest's federal access tariffs under the circumstances presented here would be unjust, unreasonable and discriminatory in violation of the Communications Act, and would cause substantial damage to AT&T.

SECOND CLAIM FOR RELIEF
(Violating State Law Prohibitions Against Unjust, Unreasonable And Nondiscriminatory Tariffs, Charges And Practices)

38. AT&T incorporates the preceding paragraphs of the Counterclaims as if set forth here.

39. Under state law, unjust, unreasonable and discriminatory tariff provisions are unlawful. Moreover, it is unlawful for a common carrier to impose unjust, unreasonable and discriminatory charges or to engage in unjust, unreasonable or discriminatory practices, including unjust or unreasonable applications of its tariffs. *See, e.g.*, Arizona Revised Statutes §§ 40-361(A), 40-334(A); Colorado Revised Statutes Annotated §§ 40-3-101(1), 40-3-106(1)(a); Minnesota Statutes §§ 237.06, 237.60. To the extent that they are deemed to require payment of access charges on the past period phone-to-phone IP telephony service calls at issue in this case, the state access tariffs that Qwest asserts here are unjust, unreasonable and discriminatory and impose unjust, unreasonable and discriminatory charges in violation of these state laws. Retroactive imposition of access charges under Qwest's state access tariffs under the circumstances presented here would be unjust, unreasonable and discriminatory in violation of these state laws, and would cause substantial damage to AT&T.

THIRD CLAIM FOR RELIEF
(Violating Federal Filing Requirements)

40. AT&T incorporates the preceding paragraphs of the Counterclaims as if set forth here.

41. The Communications Act of 1934, as amended by the 1996 Act, requires Qwest to file all interconnection agreements with the appropriate state commission.

42. Qwest violated Sections 252(a)(1), and 252(e)(1) of the Communications Act of 1934, as amended by the 1996 Act, 47 U.S.C. §§ 252(a)(1), and 252(e)(1), by failing to file numerous agreements with the appropriate federal and state regulators.

43. AT&T has been damaged by Qwest's unlawful conduct by an amount to be determined at trial, and it is entitled to recover those damages pursuant to Section 206 of the Communications Act of 1934, 47 U.S.C. § 206.

FOURTH CLAIM FOR RELIEF
(Violating Federal Prohibitions Against Discriminatory and Preferential Treatment)

44. AT&T incorporates the preceding paragraphs of the Counterclaims as if set forth here.

45. The Communications Act of 1934, as amended by the 1996 Act, prohibits Qwest from engaging in "discriminatory" or "preferential" treatment of carriers. 47 U.S.C. §§ 202, 203, 251 and 252.

46. Qwest violated the nondiscrimination and non-preferential treatment provisions of the 1934 Act, as amended by the 1996 Act, by providing certain carriers with more favorable rates, terms and conditions than it provided to other telecommunications carriers.

47. AT&T has been damaged by Qwest's unlawful conduct by an amount to be determined at trial, and it is entitled to recover those damages pursuant to Section 206 of the Communications Act of 1934, 47 U.S.C. § 206.

FIFTH CLAIM FOR RELIEF
(Violating State Filing Requirements)

48. AT&T incorporates the preceding paragraphs of the Counterclaims as if set forth here.

49. Each state where Qwest operates as an incumbent local exchange provider requires Qwest to file all agreements containing rates or charges with the state commission. *See, e.g.*, Colorado Revised Statute 40-3-103.

50. Qwest violated these requirements by failing to file numerous agreements with the state commissions.

51. AT&T has been damaged by Qwest's unlawful conduct by an amount to be determined at trial, and it is entitled to recover those damages.

SIXTH CLAIM FOR RELIEF
(Violating State Prohibitions Against Discriminatory and Preferential Treatment)

52. AT&T incorporates the preceding paragraphs of the Counterclaim as if set forth here.

53. Each state where Qwest operates as an incumbent local exchange provider precludes Qwest from providing carriers with preferential treatment. *See, e.g.*, Colorado Revised Statute 40-3-106.

54. Qwest violated these requirements by entering into secret agreements that provide certain carriers with preferential treatment.

55. AT&T has been damaged by Qwest's unlawful conduct by an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaim plaintiff AT&T respectfully requests that the Court enter judgement in its favor against Qwest, and that it grant AT&T the following relief:

- a) Damages in an amount to be determined at trial;
- b) Punitive or exemplary damages in an amount determined at trial;
- c) Attorney's fees and costs to the extent authorized by law or tariff;
- d) Pre-judgment interest, including moratory interest; and
- e) Such other relief as the Court deems appropriate.

AT&T hereby demands a jury trial on all issues and claims so triable.

Dated: September 24, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on September 24, 2004, I served a copy of the foregoing AT&T'S
AMENDED ANSWER TO FIRST AMENDED COMPLAINT to the following by:

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