

Certain of the Debtors' Assets Free and Clear of Liens, Claims and Encumbrances and (ii) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Sale Motion").

12. Subsequent to the filing of the Sale Motion, the Debtors defaulted under the terms of the Stipulation and QC and QCC attempted to terminate the provision of services to the Debtors.

13. On or about December 16, 2001, the Debtors advised the Court that they did not have a legitimate buyer for the assets and that a liquidation under chapter 7 may be likely. At the point in which the Debtors advised the Court that they might terminate their operations, the Court enjoined telecommunications providers such as QC and QCC from terminating services. In effect, this Court enjoined QC and QCC from enforcing the provisions bargained for in an order signed by the Court and required QC and QCC to continue to provide services knowing there was no ability of the Debtors to pay for those services. In effect, QC and QCC were forced to provide services to the estates *gratis*.

14. On or about December 18, 2001, while the injunction was still pending, the Court issued an order approving a sale of substantially all of the Debtors assets to IDT for approximately \$38 million (the "Sale Order"), a small fraction of the value of the assets reported to the Court on the Petition Date. As part of the Sale Order, despite the unambiguous language of the Utility Order and the Stipulation and Order, which the Debtors had breached, the Court continued to enjoin QC and QCC from terminating the services.

15. The sale contemplated a 120-day regulatory approval period (the "Regulatory Period") whereby IDT would perform management services, fund the continued operations of the Debtors, and operate the businesses, including the services provided to customers using FCC licenses and state regulatory licenses.

16. As part of the Sale Order, IDT is to pre-pay for all current charges during the Regulatory Period, however, service providers, such as QC and QCC, may not terminate services based upon a default which arose prior to closing (December 19, 2001).

17. IDT has the ability during the 120-day period to direct the Debtors to seek the entry of one or more orders of the Court authorizing the Debtors to assume and assign to IDT any executory contract or unexpired lease to which the Debtors are a party, provided that IDT shall be solely responsible for paying any cure amount that is required by any such assumption and assignment. IDT also has the ability during the 120-day period to direct the Debtors to reject any executory contract or unexpired lease to which the Debtors are a party. The Regulatory Period expires on or about April 19, 2002, but, pursuant to the Sale Order, the Debtors have the ability to request an extension of this period.

18. On January 24, 2002, the Court, without any prior notice to QC and QCC, entered an order converting the Debtors' Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code.

19. On January 28, 2002, Christine C. Shubert was appointed the Chapter 7 Trustee in the Debtors' Chapter 7 cases.

20. As of the date hereof, QC is owed \$1,586,346.44 for pre-petition services and \$3,827,527.77 for post-petition services. A chart outlining these amounts is attached hereto as Exhibit A.

General Background

The Interconnection Agreements

21. The Debtors and QC are parties to various agreements (the "Agreements") through which QC provides telecommunications services to the Debtors herein. Many of the Agreements are subject to an FCC Tariff (the "Tariff") which governs the parties' relationship for the provision of telecommunications services by QC to the Debtors. In particular, QC and the Debtors are parties to

interconnection agreements for the following states: Oregon, Arizona, Utah, Washington, Colorado, Minnesota, Wyoming and New Mexico (the "Interconnection Agreements"). A copy of an Interconnection Agreement for the state of Washington is attached hereto as Exhibit B.

22. Interconnection agreements have become prevalent in the telecommunications industry after the enactment of the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (the "Act") which encouraged competition in the telephone services industry. Among other things, the Act requires telephone companies competing within the same area to enter into contracts to "interconnect" their networks, allowing callers who subscribe to one local telephone service to receive calls from, and place calls to, those who subscribe to a different local telephone service. See 47 U.S.C. § 251(c)(2)(A). The Federal Communications Commission is authorized to establish regulations implementing the requirements of section 251 of the Act. 47 U.S.C. § 251(d)(1).

23. The terms under which the networks are connected are contained in "interconnection agreements." The Act directs telephone companies to attempt to agree upon the terms of interconnection through negotiation. 47 U.S.C. § 252(a)(1). If they cannot agree, the Act directs the governing state commission to arbitrate or mediate disputed issues. 47 U.S.C. § 252(b)(1).

The Attempted End Run Around the Bankruptcy Code³

24. Under the law, IDT has two options. First, it can cure and assume the Debtors' Interconnection Agreements as contemplated by section 365 of the Bankruptcy Code and the assumption process set forth in the Sale Order. In that event IDT is assured the ability to stand in the Debtors' shoes

³ Federal courts often look down upon actions which are "end runs" around a statute. For example, bankruptcy courts enjoin litigation which constitutes an "end run" around the automatic stay to prevent the dissipation of estate assets. See, e.g., (In re Lomas Financial Corp., 117 B.R. 64, (S.D.N.Y. 1990). In re AP Industries, Inc., 117 B.R. 789,799 (Bankr. S.D.N.Y. 1990). Courts have also prohibited "end runs" around the disclosure requirements set forth in section 1125 of the Bankruptcy Code. In re Clamp-All Corp., 233 B.R. 198, 208 (Bankr..D.Mass. 1999)("prohibiting solicitations before court approval of a disclosure statement "protect[s] against 'end-runs' around the disclosure requirements.") citing H.R.Rep. No. 595, 95th Cong., 1st Sess. at 227 (1977), reprinted in 1978 U.S.C.C.A.N. 5963.

with respect to the rights granted under those agreements, including the rights to specific business records, processes and circuits that have been used to provide service to the Debtors in the past. Second, and alternatively, IDT can reject the Interconnection Agreements and enter into new agreements with QC. However, in that case, IDT would stand in the shoes, not of the Debtors, but of any other carrier entering into its first agreements, with no special priorities, and no rights to use pre-established circuits and business processes.

25. Here, however, IDT is seeking more time while it improperly attempts to argue for the best of both worlds. That is, IDT clearly intends to direct the rejection of the Debtors' Interconnection Agreements without curing them. It is further demanding that QC enter into new interconnection agreements. Yet, IDT also is demanding that it be treated, for operational and procedural purposes, as if it had assumed the Interconnection Agreements rather than entering into new ones. And furthermore, the Chapter 7 Trustee, on behalf of IDT, is now asking this Court for an extension of time to assume or reject the Interconnection Agreements, so that it has more time to pursue this strategy.

26. This improper attempt to end run the Bankruptcy Code is clear from IDT's recent actions. Specifically, in or about March of 2002, IDT apparently chose to opt-in to existing interconnection agreements rather than utilizing the assumption/assignment bargained for in the Sale Order and relied upon by QC in connection with the sale of the Debtors' assets.

27. In addition to opting into existing agreements, IDT requested QC transfer all existing telecommunications circuits from the Debtors to IDT. In effect, IDT, without assuming the Interconnection Agreements, has attempted, through back channel maneuvers, to obtain the benefits of the Interconnection Agreements without satisfying the cure requirements of section 365 of the Bankruptcy Code.

28. In or about February and March of 2002, a representatives of the Debtors contacted QC on behalf of IDT with a request that QC change the name on the existing accounts governed by the Interconnection Agreements from the Debtors to IDT. Copies of letters dated February 26, 2002, March 27, 2002 and March 28, 2002 are attached hereto as Exhibit C. QC declined and suggested that IDT should follow the assumption process set forth in the Sale Order. Based on IDT's actions, it appears that IDT has already identified the QC services and agreements which it seeks to assume.

29. QC declined IDT's request to transfer the telecommunications circuits as such request runs afoul of section 365 of the Bankruptcy Code and violates provisions of the governing Tariff.

30. Pursuant to section 2.1.2 of the Tariff, the Debtors may not assign or transfer the use of services provided under the Tariff except as specified in the Tariff, which includes, among other things, the assignee's assumption of all outstanding indebtedness for such services, the unexpired portion of the minimum period and the termination liability applicable to such services. See FCC Tariff No. 1, ¶ 2.1.2. A copy of the relevant pages of the Tariff is attached hereto as Exhibit D. Indeed, when examining the language of the Tariff with the correspondence provided by IDT, it is clear that IDT's request conflicts with the Tariff.

The Motion Should Be Denied

31. By the Motion, the Chapter 7 Trustee requests entry of an order extending the time to assume or reject executory contracts and leases through September 25, 2002, beyond the 60-day period provided by Section 365(d)(1) of the Bankruptcy Code which ends on or about April 24, 2002.

32. QC hereby objects to the Motion to the extent the Chapter 7 Trustee seeks an extension with respect to the assumption or rejection of the Interconnection Agreements and cross moves to lift the automatic stay to authorize the immediate termination of the Interconnection Agreements.

33. Section 365(d)(1) of the Bankruptcy Code provides:

In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

11 U.S.C. § 365(d)(1) (2002).

34. The legislative history of Section 365(d) suggests the rationale of the statute by stating that “[t]his provision will prevent parties in contractual relationships with the debtor from being left in doubt concerning their status vis-a-vis the estate.” H.R.Rep. No. 595, 95th Cong., 1st Sess. 348 (1977), reprinted in 1978 U.S. Code Cong. & Ad.News 5787, 5963, 6304; S.Rep. No. 989, 95th Cong., 2d Sess. 59 (1978), reprinted in 1978 U.S. Code Cong. & Ad.News 5787, 5845.

35. Interpreting section 365(d)(1) of the Bankruptcy Code in a chapter 7 liquidation case, one court has held that:

Section 365(d)(1) strikes a balance between the trustee (who is obligated to liquidate the estate in a commercially reasonable manner) and other parties to estate executory contracts (who are entitled to receive a prompt resolution of their rights and remedies): The trustee must act to assume, reject or request an extension within 60 days of the order for relief. If there is "cause", i.e. the trustee can not make an informed determination of the best interests of the estate within 60 days, the Court is empowered to grant an extension for such time as is required.

In re Telemark Management Co., Inc., 51 B.R. 623, 625 (Bankr.W.D.Wis. 1984)

36. Instead of citing to authority for chapter 7 cases, the Chapter 7 Trustee has relied upon chapter 11 authorities⁴ interpreting section 365(d)(4) to determine what constitutes “cause” for an extension and such authorities have analyzed the factors bearing on whether the debtor has had a

⁴ A Chapter 11 debtor, unlike a Chapter 7 debtor, is afforded a reasonable time within which to elect whether to assume or reject an executory contract or unexpired lease. Compare 11 U.S.C. § 365(d)(1) with 11 U.S.C. § 365(d)(2). Theatre Holding Corp. v. Mauro, 681 F.2d 102 (2d Cir.1982); In re GHR Energy Corp., 41 B.R. 668, 670 (Bankr..D.Mass. 1984)

reasonable amount of time to decide to assume or reject an executory contract or lease. See In re Wedtech Corp., 72 B.R. 464, 471-472 (Bankr. S.D.N.Y. 1987). The Wedtech court stated that Congress "placed the burden on the debtors-in-possession to show cause why the time to determine whether to assume or reject should be extended." Id. at 469.

37. In the context of section 365(d)(2) of the Bankruptcy Code, the "specified period of time" in Section 365(d)(2) is a "reasonable time," such time to be determined by the facts and circumstances of each case. 3 Collier on Bankruptcy ¶ 365.04 [2][b] (15th ed. 2001). Courts, in determining what a reasonable time should be under section 365(d)(2), consider certain factors, including "the nature of the interests at stake, the balance of hurt to the litigants, the good to be achieved, the safeguards afforded these litigants, and whether the action to be taken is so in derogation of Congress' scheme that the court may be said to be arbitrary." In re Lionel, 23 B.R. 224, 226 (Bankr. S.D.N.Y. 1982) (citation omitted).

38. Utilizing the factors set forth above and the case law cited by the Chapter 7 Trustee, it becomes evident that there is no basis to extend the Chapter 7 Trustee's time to assume or reject the Interconnection Agreements.

39. First and foremost, the chapter 7 estates will incur no benefit from the extension of time to assume or reject the Interconnection Agreements. Since these are liquidation cases, the Chapter 7 Trustee cannot assume the Interconnection Agreements because the Chapter 7 Trustee will not operate these business as they have been sold to IDT and the Chapter 7 Trustee does not have the financial ability to assume the Interconnection Agreements and cure the arrearages. The only party who could possibly be the assignee of the Interconnection Agreements is IDT and IDT has already stated that it will not cure the Debtors' obligations in compliance with section 365 of the Bankruptcy Code. Therefore, there is no reason to provide the Chapter 7 Trustee with additional time to assume or reject the

Interconnection Agreement as there cannot be an assumption or assumption and assignment as provided for in section 365 of the Bankruptcy Code.

40. The Interconnection Agreements have no stand alone value outside the infrastructure of an operating telecommunications company because, in the telecommunications market, all existing entities which require interconnection already have such agreements or have the ability to opt-in to existing agreements. Since these cases are now in liquidation under Chapter 7 of the Bankruptcy Code, the Chapter 7 Trustee obviously does not require the Interconnection Agreements to operate the Debtors' business as a going telecommunications concern.

41. Moreover, there is no benefit to be gained for the chapter 7 estates to prolong the time period for assumption and rejection. Because the Chapter 7 Trustee is statutorily obligated to close these estates "as expeditiously as is compatible with the best interests of parties in interest," the Chapter 7 Trustee should reject the Interconnection Agreements as fast as possible as there is no benefit to the estates. 11 U.S.C. § 704(1) The longer the Interconnection Agreements are not assumed or rejected, there is a chance that the estates will incur liability to QC to the detriment of QC and all other parties in interest herein. As a fiduciary for all creditors, the Chapter 7 Trustee should not be permitted take that risk.

42. Second, the primary party which will benefit from any extension will be IDT. The extension would only benefit IDT as it may allow IDT enough time to obtain state regulatory approval to interconnect with QC's network and enable IDT to continue to avoid the assumption and assignment process, with the associated cure requirements, set forth in the Sale Order. However, IDT does not possess such rights under the Telecommunications Act. The bankruptcy process should not be used to be hoist the rights of a non-debtor party at the expense of an estate and its creditor body.

43. The vast majority of the Debtors' telecommunications infrastructure has been sold to IDT, therefore IDT is the only entity that has an interest in the Interconnection Agreements. If IDT desires to offer telecommunications services to its customers in the states covered by the Interconnection Agreements after the expiration of the Regulatory Period, IDT must follow the Sale Order process and direct the Chapter 7 Trustee to assume the Interconnection Agreements and assign them to IDT subject to IDT's payment of all cure amounts pursuant to the Sale Order and Section 365(b) of the Bankruptcy Code.

44. In the instant cases, IDT, which has the right to determine whether to direct the Chapter 7 Trustee to assume or reject the Interconnection Agreements under the Sale Order, will have had a reasonable amount of time, upon the expiration of the Regulatory Period to determine whether or not to direct such assumption or rejection. The 120-day Regulatory Period was bargained for and obtained by IDT, therefore, IDT cannot argue that it needs more time to decide.

45. Furthermore, it is apparent from the actions of IDT that it has already made an informed assessment of which rights or circuits provided under the Interconnection Agreements it seeks to continue. IDT has on various occasions contacted QC advising QC which specific circuits it wishes transferred in which states. Consequently, IDT has already determined which circuits in those states it does not wish transferred. Therefore, IDT does not need the time to make a determination as those determinations have already been made. IDT should either assume the Interconnection Agreements covering the circuits it desires, reject the agreements and accept the consequences.

46. If the Court does not compel IDT to direct the Chapter 7 Trustee to assume or reject the Interconnection Agreements on or before April 19, 2002, when the Regulatory Period expires, IDT will be able to avoid payment of approximately \$5.4 million of cure amounts to QC. If this happens, IDT

will have succeeded in carrying out its “end-run” around the Sale Order and will subject QC to an immense financial exposure without producing any conceivable benefit for the estates.

47. Such an outcome is likely to set a dangerous precedent for future acquisitions of bankrupt telecommunications companies. This stalling strategy will become a recipe for a buyer on how to avoid paying cure amounts under interconnection agreements while benefiting from the services until the buyer obtains new interconnection agreements from state public utilities commissions – and then points back to the former agreements for the services to be provided. Then, the bankrupt’s interconnection agreement is rejected leaving the counterparty creditor with substantial losses. This process, if condoned by this Court, could establish a recipe for disaster in an already beleaguered telecommunications industry.

48. In drafting the Bankruptcy Code, Congress could not have intended to benefit a third party at the expense of a debtor’s creditors without any conceivable benefit to the debtor’s estate.

49. Third, based upon the equities of these cases, QC has already suffered significant harm and should not be forced to incur further consequences. Since the Petition Date, the Debtors have been allowed to use approximately \$3.8 million worth of QC’s services without paying QC despite the clear mandate of the Utility Order and the Stipulation and Order to pay administrative expenses on a current basis. Nevertheless, the Court prohibited QC from limiting its vast losses by exercising its rights under the Utility Order and the Stipulation and Order through termination of services to the Debtors. Furthermore, the Sale Order enjoins QC from terminating services for an additional 120 days of the Regulatory Period.

50. After all this extraordinary relief, the Chapter 7 Trustee now seeks an extension to September 25, 2002, to decide whether to assume or reject the Interconnection Agreements, despite the

fact that this decision-making power has been granted to IDT by the Sale Order and IDT must exercise it before the end of the Regulatory Period, to wit, April 19, 2002.

51. QC has suffered enough financial exposure already in this case for the benefit of the Debtors, QC should not be placed in a position to suffer financial exposure for the benefit of IDT.

Cross Motion to Lift the Automatic Stay

52. The Bankruptcy Code provides that the bankruptcy court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). Section 362(d)(1) does not define "cause," leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case. In re Wilson, 116 F.3d 87, 90 (3rd Cir. 1997) (citations omitted). On a motion to lift or modify the automatic stay, the burden of proof is a shifting one. In re Telegroup Inc., 237 B.R. 87, 91 (Bankr. D.N.J. 1999). That is, section 362(d)(1) requires an initial showing of "cause" by the movant, while Section 362(g) places the burden of proof on the debtor for all issues other than "the debtor's equity in property." Id.

53. In the instant cases, there is ample cause to lift the automatic stay at the end of the Regulatory Period to enable QC to terminate services if IDT does direct the Chapter 7 Trustee to assume the Agreements and assign them to IDT.

54. Prior to the closing of the sale of substantially all of the Debtors assets to IDT, the Debtors incurred approximately \$3.8 million in post-petition services which the Debtors failed and continue to fail to pay in violation of the Utility Order and the Stipulation and Order. The Utility Order prevents QC from terminating services on account of post-petition defaults under Interconnection Agreements which occurred prior to the closing only during the Regulatory Period. Upon the expiration of the Regulatory Period, unless the Interconnection Agreements are assumed and assigned to IDT or the Chapter 7 Trustee has cured the post-petition defaults, QC should not be kept in suspense any longer

while continuing to suffer additional losses without any benefit to the estates and for the sole benefit of IDT.

55. Furthermore, the Third Circuit has held that, where a contract cannot be assumed by a debtor, the counterparty to the contract is entitled to relief from the automatic stay in order to terminate such contract. See In the Matter of West Electronics Inc., 852 F.2d 79, 82-84 (3rd Cir. 1988) (automatic stay lifted to allow government to terminate a procurement contract with debtor where debtor was not entitled to assume the contract without government's consent and government was unwilling to give consent).

56. Here, if IDT does direct the assumption of the Interconnection Agreements prior to the expiration of the Regulatory Period, the Chapter 7 Trustee will not assume them thereafter. The Interconnection Agreements have no value for any entity other than IDT. A trustee in liquidation is obligated to liquidate the estate in a commercially reasonable manner. See 11 U.S.C. § 704(1); In re Nigg, 63 B.R. 630, 632 (Bankr. D.S.D. 1986); In re Telemark Management Company Inc., 51 B.R. 623, 625 (Bankr. W.D. Wis. 1984). Therefore, the Chapter 7 Trustee will not assume the Interconnection Agreements as the commercial reality is that they cannot be assigned to anyone other than IDT and, therefore, they cannot add to the value to the estates.

57. Based upon the foregoing, there is sufficient cause for this Court to grant QC relief from the automatic stay to allow QC to terminate services at the expiration of the Regulatory Period if the Interconnection Agreements have not been assumed by the Chapter 7 Trustee and assigned to IDT.

Waiver of Memorandum of Law

58. Because this Objection and Cross-Motion present no novel issues of law, and the authorities relied upon by QC are set forth herein, QC hereby waives the filing of a memorandum in

support of this Motion, except that QC reserves the right to file a brief in reply to any response to this Objection and a response to any objection to the Cross-Motion.

WHEREFORE, QC and QCC respectfully requests that:

- a. The Court deny the Motion;
- b. The Court grant an order lifting the automatic stay to allow QC to terminate the Interconnection Agreements if the Interconnection Agreements have not been assumed and assigned to IDT before the end of the Regulatory Period; and
- c. The Court grant QC such further relief as may be just and proper.

Respectfully submitted,

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**PRE-PETITION BALANCE
WINSTAR ALL PRODUCTS**

	WASHINGTON	IDAHO	MINNESOTA	COLORADO	WYOMING	NEBRASKA	IOWA	MONTANA	OREGON	NEW MEXICO	ARIZONA	SOUTH DAKOTA	NORTH DAKOTA	UTAH	N/A
ACCESS	\$ 432,705.87	\$36,668.13	\$ 108,314.02	\$149,431.46	\$11,509.91	\$ 7,783.40	\$22,763.10	\$26,675.50	\$182,848.81	\$ 18,919.44	\$ 176,033.26	\$ 1,993.14	\$ 4,903.00	\$ 84,516.89	
LIS	\$ 18,828.81		\$ 129,090.83	\$ 49,389.04					\$ 54.38		\$ 22,810.85			\$ 4,508.37	
RESALE	\$ 23,131.74		\$ 24,835.15	\$ 23,690.55							\$ 829.87				
ADMIN									\$ 590.93						
BART MISC.															\$224.20
PRE-PETITION TOTALS	\$ 474,766.42	\$36,668.13	\$ 262,340.00	\$222,517.07	\$11,509.91	\$ 7,783.40	\$22,763.10	\$26,675.50	\$183,484.10	\$ 18,919.44	\$ 201,773.77	\$ 1,993.14	\$ 4,903.00	\$ 99,025.26	\$224.20

PRE-PETITION GRAND TOTAL= \$ 1,586,346.44

**POST-PETITION BALANCE
WINSTAR ALL PRODUCTS**

	WASHINGTON	IDAHO	MINNESOTA	COLORADO	WYOMING	NEBRASKA	IOWA	MONTANA	OREGON	NEW MEXICO	ARIZONA	SOUTH DAKOTA	NORTH DAKOTA	UTAH	N/A
ACCESS	\$ 832,630.85	\$62,192.58	\$ 636,864.50	\$423,642.91	\$31,873.17	\$ 13,484.70	\$33,358.01	\$55,336.34	\$340,220.80	\$ 38,378.18	\$ 877,137.01	\$ 5,655.34	\$ 8,382.46	\$188,062.04	
LIS	\$ 6,060.16		\$ 46,694.49	\$ 70,058.72					\$ 133.63		\$ 25,031.75			\$ 6,538.03	
RESALE	\$ 18,333.40		\$ 6,707.48								\$ 20,853.32				
ADMIN															
BART MISC.															\$ -
POST-PETITION TOTALS	\$ 857,024.21	\$62,192.58	\$ 690,266.56	\$493,601.63	\$31,873.17	\$ 13,484.70	\$33,358.01	\$55,336.34	\$340,354.43	\$ 38,378.18	\$1,023,022.08	\$ 5,655.34	\$ 8,382.46	\$174,800.07	\$ -

POST-PETITION GRAND TOTAL= \$ 3,827,527.77



**INTERCONNECTION
AGREEMENT**

BETWEEN

U S WEST COMMUNICATIONS, INC.

AND

WINSTAR WIRELESS OF WASHINGTON , INC.

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INTERCONNECTION AGREEMENT

This Interconnection Agreement, made as of this _____ day of _____, 1997, is between WinStar Wireless of Washington Inc. ("WINSTAR") and U S WEST Communications, Inc. ("USWC"), a Colorado corporation.

I. RECITALS

- A. Pursuant to this Agreement for Local Network Interconnection and Service Resale ("Agreement"), WinStar Wireless of Washington, Inc. ("WINSTAR"), a Competitive Local Exchange Carrier and U S WEST Communications, Inc. ("USWC") (collectively, "the Parties") will extend certain arrangements to one another within each LATA in which they both operate within the State of Washington. This Agreement includes terms, conditions, and prices for network interconnection, access to unbundled network elements, ancillary network services, and retail services available for resale. It will be submitted to the Washington Utilities and Transportation Commission. Notwithstanding this mutual commitment, however, the Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.
- B. The Parties agree and understand that USWC is proposing certain provisions in this Agreement, based, in large part, on the FCC's First Report and Order, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 1st Order") and the Second Report and Order and Memorandum Opinion and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 2d Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2d Order, or any other FCC Order adopted to implement the Telecommunications Act of 1996, are deemed by the courts to be not effective, this Agreement shall be modified to comport with the final court decisions and subsequent FCC rules adopted to comply with the court's decisions.

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which USWC agrees to provide (a) services for resale (hereinafter referred to as "Local Services") (b) certain Unbundled Network Elements, Ancillary Functions and additional features to WINSTAR (hereinafter collectively referred to as "Network Elements") or combinations of such Network Elements ("Combinations") for WINSTAR's own use or for resale to others. The Agreement also sets forth the terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic between USWC and WINSTAR for purposes of offering telecommunications services. Unless otherwise provided in this Agreement, the parties will perform all

of their obligations hereunder throughout, to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.

B.

This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitrated decisions by the Washington Utilities & Transportation Commission ("WUTC"), acting pursuant to Section 252 (b) of the Telcom Act involving interconnection agreements of other parties. The Parties have included for convenience certain rates in this Agreement which reflect rates established in some of those other arbitrations. WINSTAR acknowledges (1) that those rates are extended only because of the arbitrated results in other dockets, (2) that USWC intends to appeal certain of those decisions and (3) that any negotiations, appeal, stay, injunction or similar proceeding impacting the applicability of those rates to the local service providers who were parties to those arbitrations will similarly impact the applicability of those rates to WINSTAR. The Parties further recognize that the Agreement is subject to the generic proceedings by the WUTC addressing the services in this Agreement.

C. WINSTAR will notify USWC when WINSTAR begins offering residential and business exchange services in this state through the use of its facilities.

D. Acknowledgment of Deferred Issues

1. WINSTAR acknowledges it is USWC's position that USWC's existing telecommunications network represents substantial investment made as a result of its carrier-of-last-resort obligation and that such network allows WINSTAR's end users to interconnect with significantly more business and residential customers than vice versa. WINSTAR further acknowledges USWC believes that a separate transitional element is necessary to compensate USWC for the value of its network in this Agreement, that under the Act, the FCC will establish a proceeding to address Universal Service Support, and that the Act also empowers the state Commission to establish a separate proceeding on universal service issues. WINSTAR further acknowledges that USWC believes that USWC is entitled to receive additional compensation for costs of implementing various provisions of the Act, and that USWC shall seek such additional recovery through future state and/or federal regulatory proceedings. WINSTAR disagrees with these USWC positions.
2. In consideration of WINSTAR's willingness to interconnect on the terms set forth in this Agreement, and without prejudice to the position it may take in the FCC docket or before any state Commission, USWC agrees to await the outcome of such proceedings, rather than seek universal service support from WINSTAR at this time.

III. DEFINITIONS

- A. "Access Service Request" or "ASR" means the industry standard forms and supporting documentation used for ordering Access Services. The ASR will be used to order trunking and facilities between WINSTAR and USWC for Local Interconnection Service.
- B. "Access Services" refers to the tariffed interstate and intrastate switched access and private line transport services offered for the origination and/or termination of interexchange traffic (see each Parties' appropriate state and interstate access tariffs).
- C. "Act" means the Communications Act of 1934 (47 U.S.C. 151 et.seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or a Commission within its state of jurisdiction.
- D. "ADSL" or "Asymmetrical Digital Subscriber Line" means a transmission technology which transmits an asymmetrical digital signal using one of several transmission methods (for example, carrier-less AM/PM discrete multi-tone, or discrete wavelet multi-tone).
- E. "Automatic Number Identification" or "ANI" means a signaling parameter which refers to the number transmitted through a network identifying the billing number of the calling party.
- F. "Basic Exchange Switched Features" are optional end user switched services that include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection. (See Bellcore documentation for definition).
- G. "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basis residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this statement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.
- H. "BLV/BLVI Traffic" means an operator service call in which the caller inquires as to the busy status of or requests an interruption of a call on another customer's Basic Exchange Telecommunications Service line.
- I. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party. Reference Technical Pub. 77342.
- J. "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:
 - a. "End Office Switches" which are used to terminate Customer station loops for the purpose of interconnecting to each other and to trunks; and