

EXHIBIT A

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Qwest Communications Corporation, a
Delaware corporation,

Plaintiff,

v.

AT&T Inc., a Delaware corporation; AT&T
Communications of the Midwest, Inc., an Iowa
corporation; and TCG Minnesota, Inc., a
Delaware corporation,

Defendants.

Case No.

COMPLAINT

For its complaint against Defendants, Plaintiff Qwest Communications Corporation ("Qwest") states the following:

Introduction and Overview

1. AT&T is a telecommunications carrier that has, since at least 1998, engaged in a broad-scale national effort to evade the legally-mandated intrastate switched-access tariffs filed in numerous states and thereby gain a significant illegal and unfair competitive advantage at the expense of Qwest, one of AT&T's competitors, among others.

2. Many states, including Minnesota, require telephone companies and telecommunications carriers to file and honor tariffs for intrastate access charges. A purpose of such legal requirements is to protect against price discrimination and unfair competition.

3. AT&T flouted state tariff requirements and coerced nascent competitive local exchange telephone companies ("CLECs") to provide off-tariff rates with various threats and

incentives, including withholding compensation from the CLECS for services provided to AT&T until the CLECs agreed to accept contracts for illegal and discriminatory intrastate switched-access rates and charges. AT&T used a non-negotiable form for these contracts that required the CLECs to keep the agreements confidential. With the exception of a small subset in Minnesota for which disclosure was forced by agency action, none of these agreements have been filed. Nor has the discrimination in favor of AT&T been justified.

4. The Minnesota Department of Commerce uncovered AT&T's conduct and initiated administrative proceedings against AT&T. The Minnesota Public Utilities Commission determined that AT&T had a duty as a long-distance telephone company (also known as an inter-exchange carrier or "IXC") to pay tariffed amounts for intrastate switched access. Those proceedings have caused AT&T to enter into a "Minnesota exception," under which AT&T has begun to pay tariff rates in Minnesota. However, AT&T's actions have not been fully remedied in Minnesota and its conduct continues unabated in other states. AT&T's scheme involves hundreds of agreements, many of which have multi-state applications and effects.

5. AT&T has violated state requirements directly; it has committed and participated in frauds and misrepresentations; it has conspired with other companies to procure and exploit violations; and it has aided and abetted the violations of other companies. AT&T continues to enforce and exploit these agreements in a large number of states in which they were and are unlawful.

6. AT&T's actions have caused and are causing harm to Qwest, one of AT&T's competitors, in the form of lost market share, lost profits and other consequential harm.

7. Qwest brings this action to seek declaratory relief, injunctive relief, damages, and other relief warranted by AT&T's illegal actions.

Parties

8. Qwest is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest has participated and currently participates in the long distance market or markets at issue in this case and owns the claims at issue, either by virtue of its own dealings or as a result of mergers, assignments and other consolidations from predecessor or affiliate organizations. Qwest is authorized to do business in the State of Minnesota.

9. Defendant AT&T Inc. is a Delaware corporation with its headquarters in San Antonio, Texas. At the time that most of the contracts described herein were formed, AT&T Corp. was a New York corporation with headquarters in New Jersey, but on November 18, 2005, SBC Communications, Inc. merged with AT&T Corp. and changed its name to AT&T Inc. AT&T Inc. is the successor in interest, parent, or affiliate of all AT&T entities described herein. (The term "AT&T" in this Complaint will be used to refer to AT&T Inc. and its predecessors and affiliates and will be used to refer to AT&T's predecessors and affiliates, including the co-defendants, in their roles as CLECs or IXC's, as applicable.)

10. Defendant AT&T Communications of the Midwest, Inc. ("AT&T Midwest") is an Iowa corporation headquartered at One AT&T Way, Bedminster, NJ 07921. It is a wholly-owned subsidiary of AT&T.

11. Defendant TCG Minnesota, Inc. is a Delaware corporation with its principal place of business in New Jersey. It too is a wholly-owned subsidiary of AT&T.

Jurisdiction and Venue

12. Jurisdiction in this Court is proper pursuant to Minn. Stat. § 484.01.

13. Venue in this District is proper pursuant to Minn. Stat. § 542.09.

Factual Background

Role of Regulation and Competition in the Relevant Markets in the Telecommunications Industry

14. This lawsuit pertains to an important aspect of the telecommunications industry that may be virtually unnoticed by most consumers of long-distance phone calls but that has enormous economic implications for the CLECs and IXCs that connect and transport those calls.

15. "Local exchange carriers" ("LECs") provide local telephone service to customers ("subscribers"). LECs own and control most of the plant and facilities used to provide local telephone service in their geographic areas. By way of general illustration, in local telephone networks, the subscribers' wired telephones are connected to the network in the subscribers' local service areas by cable strung on telephone poles or buried underground. The cable connects each telephone subscriber to a local "central office" switch in the LEC's service area. A switch is a machine that receives telephone calls and "switches" (that is, connects) the calls to the next step along the path to the destination that the subscriber dialed. If the call is for a subscriber on another switch, the central office sends the call to another switch that routes the call on its way. Thus, the telephone network is in essence a series of switches connected to one another. (While technologies such as internet protocol networks are beginning to change the structure of local telephone systems, this description remains a generally accurate explanation of the network structure involved in this case.)

16. Local telephone networks: (1) complete local calls; and (2) originate and terminate long-distance calls. When a subscriber places a call to someone whom the subscriber's LEC also services, then that LEC originates and terminates the call. In some cases involving "local toll" traffic, if the call is outside the free local service area but not necessarily outside the territory of the LEC that originates the call (known as "local toll service"), the subscriber dials

"1" plus the phone number and the call goes to the subscriber's preselected IXC to carry the call from the originating LEC exchange to the terminating LEC exchange. When a subscriber dials a number outside the LEC's service area with "1+" dialing, the caller's LEC originates the call, but then routes it outside the local service area. If the call is long-distance, the LEC sends the call to the subscriber's preselected IXC.

17. Generally, IXCs may not maintain their own networks to the end user's location and in many cases it is economical for IXCs to rely, therefore, on access to the networks maintained by LECs when bringing long distance calls from the calling party (originating) or to the receiving party (terminating). When a subscriber places a long-distance call (or when the subscriber has chosen a company other than its LEC to provide its local toll service), the customer's IXC generally must access both the calling party's local network and the receiving party's local network to complete the call. LECs charge IXCs a fee for using their local networks to complete customers' long-distance or local toll calls. In other words, IXCs must pay the LECs' "access charges" to use the local networks on each end of the call. Local access on the calling party's end of the call is called "originating access," while access on the receiving party's end is "terminating access."

18. This lawsuit pertains specifically to the subset of long-distance phone calls that are handled on an intrastate basis—that is, phone calls that originate in one local telephone exchange, are carried by one or more IXCs, and are terminated in another local telephone exchange within the same state.

19. LECs may be incumbent local exchange carriers ("ILECs"), including the successors to the Bell Telephone Company, or they may be CLECs, which are companies that have come into existence after the enactment of the Telecommunications Act of 1996. This

lawsuit pertains to the intrastate switched-access charges for origination or termination with CLECs.

20. The larger IXCs during the period from approximately 1998 through the present have included AT&T, MCI, Sprint, and Qwest. Some IXCs, such as AT&T, have also acted as CLECs in some states or nationally.

21. Since a merger in 2000, Qwest has been affiliated with an ILEC known as Qwest Corporation ("QC"), that has provided local exchange services in 14 states, including Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. These 14 states are referred to herein as Qwest's "In-Region States." Qwest has provided retail and wholesale long-distance inter-exchange telephone service in states other than its In-Region States at all pertinent times since 1998. Qwest has provided retail long-distance inter-exchange service in its In-Region States prior to the merger in 2000, and, thereafter, only after receiving certain approvals from various state and federal agencies, the dates of which range from about December 2002 through December 2003.

22. The switched-access charges for calls made within the same state are intrastate switched-access charges and are subject to regulation, to the extent exercised, by the given state and its administrative agencies charged with regulation of intrastate telephone service. The switched-access charges for calls that cross state lines are interstate switched-access charges and are subject to regulation by the Federal Government and, specifically, by the Federal Communications Commission ("FCC"). This lawsuit pertains to intrastate calls and not to interstate calls.

23. Nearly all states, including Minnesota, subscribe to the filed rate doctrine as reflected in statutes, regulations, and case law. The filed rate doctrine, sometimes referred to as the filed tariff doctrine, generally requires that the specific filed rate, toll, charge or price for a service be published in a tariff and charged to customers until the rate, toll, charge, or price for the service is changed through a new tariff filing or through an order of the appropriate regulatory agency requiring a going-forward change to the tariff. Under the filed rate doctrine, parties providing or receiving a tariffed service, including many telephone or telecommunications services, are governed by the tariffed rate or price, and are not free to negotiate an off-tariff rate. Many states, including Minnesota, also have had or have policies requiring CLECs and other telephone companies or telecommunications carriers to provide services and prices without discrimination between or among customers.

24. Many states have required or currently require CLECs to keep on file with the appropriate public agency the specific rate, toll, charge, or price for intrastate switched-access services provided by CLECs and or mandate non-discrimination with respect to such charges. This lawsuit pertains to states that have required or require such filings for intrastate switched-access services provided by CLECs or that mandate non-discrimination with respect to such matters. For purposes of this Complaint, the states at issue, referred to herein as "Filed-Rate States," include the following:

- ❖ Alabama;
- ❖ Arizona;
- ❖ Arkansas;
- ❖ California;
- ❖ Colorado;

- ❖ Connecticut;
- ❖ Delaware;
- ❖ Florida;
- ❖ Georgia;
- ❖ Iowa;
- ❖ Kansas;
- ❖ Kentucky;
- ❖ Louisiana;
- ❖ Maryland;
- ❖ Massachusetts;
- ❖ Mississippi;
- ❖ Missouri;
- ❖ Minnesota;
- ❖ Nebraska;
- ❖ Nevada;
- ❖ New Jersey;
- ❖ New Mexico;
- ❖ New York;
- ❖ North Carolina;
- ❖ North Dakota;
- ❖ Oklahoma;
- ❖ Pennsylvania;
- ❖ Rhode Island;
- ❖ South Dakota;

- ❖ Tennessee;
- ❖ Texas;
- ❖ Vermont;
- ❖ Virginia;
- ❖ West Virginia; and
- ❖ Wyoming.

Qwest reserves the right to amend and supplement this listing of Filed-Rate States to bring into play other states that currently have similar requirements or that have had similar requirements at material times.

25. In Filed-Rate States, LECs charge tariff rates to the IXC's for use of their networks for the origination and termination of long-distance calls. Minutes of Use (MOU) provide a common measurement for the traffic that is routed through the LEC switches and a basis for common intrastate switched-access charges.

26. Since interstate switched-access charges are regulated by the FCC and intrastate switched-access charges are regulated, if at all, by the many Filed-Rate States, intrastate switched-access charges for CLECs can vary from state to state and can (and generally do) vary from the interstate rates. Moreover, intrastate switched-access charges for CLECs can (and generally do) vary from those charged by ILECs. Intrastate switched-access charges are often higher than interstate switched-access charges.

27. There has been and remains fierce competition among IXC's for inter-exchange telephone traffic both for intrastate and interstate calls at both retail and wholesale levels. IXC's want to control and minimize variable costs, and switched-access charges represent a large share of those costs. In Filed-Rate States, however, intrastate switched-access charges are governed by

tariffed prices. Accordingly, fair competition as between and among IXCs for intrastate long-distance telephone calls is to be pursued in relation to prices of other service inputs, quality of service, and other factors besides the intrastate switched-access charges.

28. The long distance market includes the retail market, in which services are sold directly to end-user customers, and the wholesale market, which involves resale or transport and termination services for another IXC's traffic. Both the retail long distance market and the wholesale long distance market are and have been competitive markets during the times relevant to this lawsuit. At the same time, IXCs have also routinely entered into transactions with other IXCs in the wholesale market for resale and transport and termination services. The expectation and express or implied representation and obligation for such wholesale services is that the terminating IXC will terminate the call lawfully and will assume and satisfy all associated obligations to pay the tariffed charges in Filed-Rate States for intrastate switched-access.

29. Access charges are one of the largest costs of doing business for Qwest, AT&T, MCI, and Sprint, as well as other long-distance companies.

30. Revenues from IXCs for intrastate switched-access charges and interstate switched-access charges represent a large share of the income expected by CLECs for their local exchange services.

AT&T's Self-Help and Off-Tariff Deals

31. AT&T decided in 1998 to adopt a national policy under which it would refuse to pay for CLEC access services in exchanges where the ILEC access charges were lower than those of the CLEC. AT&T pursued its national policy without regard to the unlawful results of its policy in Filed-Rate States.

32. AT&T obtained enormous financial leverage over the CLECs through its unilateral decision to withhold payment of the tariffed access charges. This created a financial squeeze on CLECs that effectively eliminated meaningful opportunities for negotiation, and put the CLECs at the mercy of AT&T's demands.

33. AT&T has publicly admitted its self-help measures and has attempted to justify those measures by complaining that the public policy-makers have failed to mandate reforms, failed to do so with sufficient speed, or failed to mandate adequate reforms. Rather than abide by decisions of the regulators of Filed-Rate States, AT&T instead elected to engage in self-help to pay less than state law required it to pay, and carried out its wishes in a deceptive, intentional and knowing manner.

34. AT&T conceived, undertook, and implemented its self-help measures without regard for the law as it existed and currently exists. As set forth below, AT&T reached a bilateral deal with MCI for untariffed prices between their respective IXC and CLEC operations as early as 1998, imposed its self-help deals on other CLECs as early as 2000, and the deals have continued apace since then.

35. Over the years, AT&T used the financial leverage gained through its size, and the volume of its intrastate calls originated or terminated with CLECs, to refuse to pay CLECs for access services at lawful tariffed rates and to induce, coerce, or persuade the CLECs to enter into agreements for the purpose of avoiding lawful tariffed access charges. In the words of one of the CLECs pressured by AT&T's self-help measures:

AT&T asserts that CLECs "voluntarily" agreed to these contracts. This is the equivalent of Stalin saying that Poland voluntarily agreed to occupation by the Soviet Union. The fact is that AT&T refused to pay any access charges unless and until an agreement was signed. AT&T not only refused to pay the tariffed rate, it refused to pay anything, even the rate that it claimed was reasonable, until the CLEC signed the agreement. This denied the CLECs millions of dollars at a

time that they were struggling to merely survive. Thus the agreements were hardly "voluntary" on the part of the CLECs.

Eschelon's Reply to AT&T's Response to Department Exhibit, p. 3, In the Matter of Negotiated Contracts for the Provision of Switched-access Services, Minnesota Public Utilities Commission ("PUC"), Docket No. P442, etc./C-04-235, May 23, 2005. In the words of another group of CLECs:

AT&T misleadingly suggests that the CLECs "voluntarily" agreed to these contracts in exchange for not having to defend their excessive tariff rates in complaint proceedings. More accurately, the CLECs entered into these contracts because AT&T was refusing to pay any of the multiple millions of dollars in access charges that the CLECs had properly billed at tariffed rates for services already received. The CLECs had to enter into these contracts to receive even a portion of these very large past due payments.

Reply of Focal Communications, Inc., Integra Telecom of Minnesota, Inc., KMC Telecom, Inc. McLeodUSA, Inc., and XO Communications, Inc. to AT&T's Comments on Department's Exhibit, PUC Docket No. P442, etc./C-04-235, May 23, 2005. In the same vein, the CLEC McLeodUSA provided the proper characterization of the conduct of AT&T and MCI in Reply Comments of McLeodUSA, Inc., PUC Docket No. P442, etc./C-04-235, September 9, 2004:

AT&T was usurping the Minnesota Public Utilities Commission's authority to determine the reasonableness of switched-access rates. Rather than address the reasonableness of CLEC access rates in proper proceedings, AT&T flexed its considerable market power in a policy of "self help" and extracted from CLECs the access rates it wanted. . . . MCI did the same. . . . The market power disparity between the IXCs and CLECs is apparent in the striking similarity between all of the agreements in which all the key terms were dictated by the IXCs.

36. For the Filed-Rate States, AT&T unilaterally decided to engage in self-help through confidential, coerced deals that afforded discriminatory pricing in its favor rather than to obtain lawful revisions to tariffs in compliance with applicable law.

37. AT&T's conduct caused disadvantage and harm not only to the CLECs, but also to AT&T's competitors and to the public. One of the affected CLECs explained the public harm:

IXCs had already billed their customers for the long distance services that the IXCs were able to provide by virtue of the access services provided by McLeodUSA and other CLECs. Yet, when an IXC used its market power (in the form of withholding very large sums of money that CLECs desperately needed to fund their day-to-day operations) to extract reduced access rates, IXCs did not pass the benefits they reaped to their customers in the form of refunds. Instead, this money simply went to improve the bottom line profits of the IXCs [who had thereby avoided the tariffed access rates].

Reply Comments of McLeodUSA, September 9, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services*, C-04-235.

38. In a document dated August 18, 2004, AT&T admitted to the PUC that its agreements all follow the same basic form, stating:

In the past four years or so, AT&T has entered into hundreds of agreements based on the same form with CLEC providers of switched-access services throughout the United States.

AT&T Comments, Motion to Dismiss and Motion for Summary Judgment, August 18, 2004, in *In the Matter of Negotiated Contracts for the Provision of Switched-access Services*, C-04-235.

On information and belief, AT&T has continued to enter into additional and similar agreements since August 2004, continues to rely upon those agreements at the present time, and plans to continue to do so for the foreseeable future, barring specific rulings to the contrary.

39. Illustrative Settlement and Switched-Access Service Agreements, which have become known to Qwest by virtue of disclosures obtained by the Minnesota Department of Commerce ("DOC"), include:

- a. Agreement with MCI on July 23, 1998;
- b. Agreement with Eschelon Telecom, Inc. on May 1, 2000;
- c. Agreement with Time Warner on January 1, 2001;
- d. Agreement with Integra on July 1, 2001;
- e. Agreement with McLeod on July 1, 2001;

- f. Agreement with XO Communications on July 1, 2001;
- g. Agreement with Focal Communications Corporation of Minnesota on December 25, 2001;
- h. Agreement with NorthStar on September 11, 2002;
- i. Agreement with Granite on April 1, 2003;
- j. Agreement with New Access, Stonebridge, Choicetel, Emergent on May 1, 2003;
- k. Agreement with Digital on July 31, 2003;
- l. Agreement with Desktop Media on August 15, 2003;
- m. Agreement with Mainstreet on September 4, 2003;
- n. Agreement with OrbitCom, Inc. on January 1, 2004;
- o. Agreement with VAL-ED on February 16, 2004;
- p. Agreement with Time Warner on February 20, 2004, superseding prior Agreement; and
- q. Agreement with Tekstar on April 5, 2004.

40. The following provisions are generally found in all or the vast majority of these "Settlement and Switched-Access Service Agreements":

- a. The agreements were entered into by and between AT&T Corp. on behalf of itself and each of its subsidiaries, all collectively referred to as "AT&T," and any given CLEC.
- b. Part A of the agreements documented a payment by AT&T of a "Settlement Amount," representing, on information and belief, a substantially discounted payment for switched-access services provided to AT&T by the CLEC prior to the date of the agreement.

- c. The agreements provided for a resolution of the so-called "Dispute," which AT&T had created by withholding the payments unlawfully withheld from CLECs in need of cash, providing a release in favor of AT&T (to protect the discount it had extracted) as of the "Effective Date," for all claims in any court or agency.
- d. The agreements provided for a contract period in Part B.1 governing prices relating to "Switched-access Services," although the contract periods varied from CLEC to CLEC.
- e. The agreements pertained to Switched-access Services throughout the nation or at least the entire area served by any particular CLEC.
- f. The agreements provided for "Pricing Principles" in Part B.6, which usually referred to a Schedule A, to govern the charges for intrastate switched-access service as between AT&T and the given CLEC. The agreements did not provide for or authorize the CLEC to make filings of the agreements or otherwise comply with filing requirements for the Filed-Rate States.
- g. Schedule A provided for the same charges to be used in all states served by the CLEC, and only in a few instances did Schedule A include exceptions for particular states.
- h. The agreements contained provisions that made the agreements and the terms of the agreements, both in their literal wording and their practical effect, confidential.
- i. The agreements used by AT&T have remained essentially the same over the several years that AT&T has been employing self-help measures, without changes

prompted by various decisions that were adverse to AT&T's practices and that put AT&T on notice of its violations of the laws in the Filed-Rate States.

41. The settlement amounts AT&T paid to any particular CLEC for intrastate switched-access charges constituted only partial payments for the tariffed rates for those services that had been used for long-distance calls prior to the dates of the settlements.

42. Not only did AT&T achieve significant savings through its off-tariff prices for services predating the agreements, AT&T also achieved significant savings with the prospective, unique, off-tariff rates it achieved through each deal.

43. Since off-tariff savings were and are not lawful in the Filed-Rate States, AT&T's gains are unlawful. The specific amounts of these unlawful gains are not yet known to Qwest.

44. As explained below, AT&T eventually agreed to abide by tariffed rates for intrastate switched access in Minnesota. However, AT&T continues to enjoy the benefits of its untariffed rate agreements for Filed-Rate States other than Minnesota, and continues to threaten CLECs with economic hardship, sanctions, claims for breach of contract, and other disincentives against complying with their tariffed rates for AT&T's use of their intrastate switched-access services in any state other than Minnesota.

45. Even in Minnesota, and except for a repayment to MCI, AT&T has not repaid to CLECs the amount of illegal rate relief it achieved through its deals with any CLEC for any services received prior to the date on which the DOC filed a complaint against AT&T and various CLECs. Rather, AT&T has agreed merely to honor specific tariffs in Minnesota on a going-forward basis.

Bi-Lateral Off-Tariff Deals Between AT&T and MCI

46. AT&T and MCI entered into a National Services Agreement (as amended) between Metro Access Transmission Services, Inc. and AT&T Communications, Inc., dated November 1, 1996, and a Switched-Access Services Agreement (as amended) between AT&T Corp. and MCI WorldCom Network Services, Inc., dated July 23, 1998. One or both of these agreements served as private contractual arrangements between these two competitors governing the respective amounts which AT&T's CLEC charged to MCI's IXC and which MCI's CLEC charged to AT&T's IXC.

47. On or about February 25, 2004, AT&T and MCI entered into a settlement to resolve, among other things, a complaint that AT&T had filed against MCI in the United States District Court, Eastern District of Virginia, in September, 2003. In addition to the settlement of the lawsuit, the parties also resolved a dispute about access charges, confirming that the access charges would be paid at contract rates, rather than tariff rates, for the period in question prior to the settlement. In addition, AT&T and MCI entered into reciprocal switched-access service agreements with two-year terms in a format consistent with the same format AT&T used with other CLEC deals. Under these reciprocal agreements, AT&T's CLEC agreed to charge MCI's IXC an off-tariff rate for all calls, including intrastate switched-access calls. And, MCI's CLEC agreed to charge AT&T's IXC the same off-tariff rate for the same classes of calls. During this time, AT&T maintained a filed tariff for its own switched-access for services for terminating calls at a rate that is higher than the rate it granted solely to MCI in the reciprocal deal.

48. The rates charged by AT&T's CLEC and MCI's CLEC deviated below their tariffed rates for intrastate switched-access service in Filed-Rate States.

49. Neither AT&T nor MCI complied with applicable filing and non-discrimination requirements for tariffed rates with respect to any of their reciprocal agreements as required under laws and regulations in the Filed-Rate States.

50. In reference to the reciprocal agreements between AT&T and MCI, Gregory J. Doyle, a Manager for the DOC, stated: "AT&T . . . engaged in self-help which resulted in discrimination and a thumbing of its nose at legal requirements." Doyle Rebuttal Testimony filed in *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-access Contracts*, October 6, 2006 ("Doyle Rebuttal"), p. 18.

AT&T's Deceptions Concerning Tariffed Rates

51. Beginning in about 2001 and from time to time thereafter, AT&T filed its own tariffs in various states, including, without limitation, Arkansas, Colorado, Florida, Massachusetts, Minnesota, Missouri, New Jersey and New York, for the purpose of collecting a monthly "In-State Connection Fee" ("ISCF") from residential customers of approximately \$1.95.

52. AT&T specifically or implicitly represented to regulators, the public and other parties in each of these states that it needed the ISCF in order to cover the difference between the rates for tariffed access charges for intrastate long-distance calls as compared with the rates for tariffed access charges for interstate long-distance calls.

53. AT&T concealed or failed to reveal to regulators, the public and other parties that AT&T was at that same time refusing to pay the tariffed intrastate switched-access rates to CLECs and demanding and obtaining off-tariff intrastate switched-access rates from CLECs far lower than the tariffed intrastate switched-access charges.

54. AT&T profited by collecting the ISCF from its residential customers at the same time as it was refusing to pay and avoiding payment of the tariffed intrastate switched-access charges upon which the ISCF was ostensibly predicated.

Tolling of Claims

55. The existence, terms, and conditions of the off-tariff agreements were not known to Qwest until recently and even now Qwest has only limited information about these off-tariff agreements.

56. AT&T required pre-negotiation confidentiality agreements as a condition of negotiations with a large number of CLECs.

57. Nearly all of the agreements AT&T imposed upon CLECs contained provisions that made the agreements confidential.

58. The DOC obtained information about a small number of off-tariff agreements, which led the DOC to file an administrative complaint with the PUC on June 15, 2004, against AT&T, MCI, and a number of other CLECs and IXC's. However, at that time, while the DOC's complaint described some information about the unfiled, off-tariff agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public. As explained by Mr. Doyle: "[T]his case was initiated in early 2004, and for two years, AT&T and the other parties to the agreements continued to abide by the veil of secrecy. Doyle Rebuttal, p. 3. Eventually, all of the CLECs and IXC's agreed to abide by tariffed rates in Minnesota going forward, and the DOC's complaint was dismissed against all parties, except against AT&T for its conduct as a CLEC with respect to the bi-lateral deal with MCI. The majority of AT&T's off-tariff intrastate switched-access pricing agreements, except for a small subset of those

agreements that formed the basis of certain administrative proceedings in Minnesota, have not yet been made public.

59. On December 30, 2005, the DOC filed an additional complaint with the PUC against AT&T and a number of other CLECs. The DOC had only recently become aware of those additional agreements between AT&T and those CLECs. Again, while the DOC's complaint described some information about the unfiled agreements between AT&T and the other parties, the agreements and their material terms were described and provided with most of the pertinent information redacted and unavailable to Qwest or the public.

60. As a result of AT&T's representation to the PUC in April 2006, Qwest has finally been permitted to receive and review a handful of AT&T's secret agreements with CLECs, including the discriminatory pricing rates that AT&T was able to extract from CLECs through its predatory practices. Qwest had no access to these agreements until after April 2006.

61. Even now, the only subset of agreements that has been made available to Qwest is the handful of agreements that have been revealed in Minnesota. The other similar agreements and pricing arrangements AT&T extracted from other CLECs, including a large number of those entered into applicable to Minnesota and including all of those affecting only other states, still have not been filed or made available to Qwest. Accordingly, while the veil of secrecy has been lifted enough to glimpse a small fraction of AT&T's conduct, AT&T continues to profit by its illegal actions in Filed-Rate States across the nation.

Regulators Reject AT&T's Assertions of Right to Evade Tariffed Rates

62. The Iowa Supreme Court confirmed that AT&T was obligated to comply with tariffed switched-access rates in *AT&T Commc'ns of the Midwest, Inc. v. Iowa Utils. Bd.*, 687 N.W.2d 554 (Iowa 2004). The court affirmed an Iowa Utilities Board ruling that AT&T was

obligated to pay the tariffed rates for past intrastate switched-access services. The court relied upon the filed-rate doctrine, observing that this doctrine “provides that the legal rights of the utility in the customer are measured exclusively by the published tariff.” *Id.* at 562. The court concluded that the tariff rate on file was applicable and enforceable until it was found to be unlawful. (The Iowa case commenced when five CLECs filed an administrative complaint filed against AT&T Midwest with the Utilities Board for the State of Iowa Department of Commerce on August 16, 2000, objecting that AT&T had refused to provide payment for billed originating and terminating access services. Other CLECs intervened. Each of the CLECs had adopted and filed an intrastate switched-access tariff. AT&T argued that it should not be required to purchase and pay for access services from the CLECs at rates AT&T deemed to be non-competitive.) The Iowa Utilities Board ruling against AT&T, affirmed by the Iowa Supreme Court, had been reflected in a Decision and Order issued October 25, 2001. The Board ruled that:

Any interexchange calls originating outside the called user’s exchange using AT&T’s services must be completed to the called user’s telephone number and AT&T must pay the tariffed terminating access charges, even if the user’s chosen LEC has terminating access charges that are higher than AT&T might like. Similarly, calls originating from customers of the complainant CLECs must be carried by AT&T, so long as AT&T serves any LEC in the exchange, and AT&T must pay the tariffed originating access charges.

This does not put AT&T at the mercy of an “unconstrained monopoly,” as AT&T argues. If AT&T (or any other interexchange carrier) believes at any time that a particular CLEC’s access charges are unreasonable, the interexchange carrier may file a written complaint with the Board ..., asking the Board to determine the just and reasonable terms and procedures for exchange of toll traffic with the CLEC

....

The Board ordered that AT&T was obligated to pay for the access services at the CLEC’s tariffed rates in effect at the time the services were used.

63. The Minnesota PUC has also ruled against AT&T on the off-tariff conduct. For example, the PUC issued its Order Finding Failure to Pay Tariffed Rate, Requiring Filing, and

Notice and Order for Hearing on February 8, 2006, in *In the Matter of the Complaint of PrairieWave Telecommunications, Inc. Against AT&T Communications of the Midwest*, PUC Docket No. P-442/C-05-1842. In that Order, the PUC explicitly ruled:

The Commission finds that AT&T is obligated to pay PrairieWave's tariffed access rates and that it has failed to do so. The Commission rejects AT&T's contention that it was authorized to withhold payment on the basis of its belief that the tariffed rates were excessive, unjust, unreasonable, and therefore illegal.

Order, at p. 2. The matter had come before the PUC on the complaint of PrairieWave that AT&T Midwest was refusing to pay PrairieWave's tariffed rates for intrastate switched-access services. AT&T Midwest admitted that it had not paid monthly invoices submitted by PrairieWave, but asserted in a counterclaim that the tariffed rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal. The DOC urged the PUC to resolve PrairieWave's complaint on legal and policy issues and to refer the counterclaim for an evidentiary hearing. At a hearing before the PUC on January 12, 2006, the PUC rejected AT&T's contention that it was allowed to withhold payment on the grounds that AT&T deemed the rates excessive. The PUC provided a detailed explanation in support of its decision that "AT&T was and is obligated to pay tariffed access rates," Order, at p. 2, starting with the invocation of the filed rate doctrine, embracing the following definition:

Filed rate doctrine. Doctrine which forbids a regulated entity from charging for its services other than those properly filed with the appropriate federal regulatory authority.

Order, at p. 2. The PUC went on to explain:

Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service areas, including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics.

PrairieWave therefore lacked the right to accede to AT&T's request to retroactively adjust its access rates, and AT&T lacked the right to pay any rate other than the tariffed rate.

Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications network on which the public depends and the competitive telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations.

Order, at p. 3 (citations omitted).

64. As noted above, in another proceeding, the Minnesota DOC initiated a complaint against AT&T and others in June 2004. That administrative proceeding was given the Docket Number P-442 et seq./C-04-235. Eventually, the parties to that proceeding agreed to abide by filed tariffs on a prospective basis, except that AT&T did not reach an agreement with the DOC concerning its conduct as a CLEC with respect to the bi-lateral deals with MCI. The Minnesota PUC referred that complaint to the Office of Administrative Hearings ("OAH") for an evidentiary proceeding.

65. In the ensuing contested case proceeding concerning AT&T's conduct as a CLEC, on June 26, 2006, in a Recommendation on Motion for Summary Disposition, Administrative Law Judge Steve M. Mihalchick recommended that the Commission should find, among other violations, that "AT&T knowingly and intentionally violated applicable provisions of Minn. Stat. Ch. 237, Commission orders, and rules of the Commission adopted under Minn. Stat. Ch. 237," and

That AT&T engaged in discrimination by knowingly or willfully charging, demanding, collecting, and receiving the untariffed rates for intrastate-switched-access service under the terms of its unfiled Agreement with MCI, while offering, charging, demanding, collecting, or receiving tariffed rates for intrastate-switched-access service with regard to other IXCs under similar circumstances, in violation of Minn. Stat. § 237.09, subd. 1.

Recommendation, pp. 1-2. In explaining these recommendations, Judge Mihalchick explained that AT&T is required to file its tariff or price list for each service and noted that AT&T entered into two unfiled Agreements with MCI but did not file the terms as a unique price list or tariff term. "Instead, AT&T filed and maintained a separate tariff under which AT&T provided less favorable terms to other carriers that did not reach a unique agreement with AT&T."

Recommendation, p. 9. The Administrative Law Judge continued:

[B]y offering unique pricing to MCI that it did not file as a tariff, AT&T engaged in unreasonable discrimination CLECs, like AT&T [are permitted] to offer telecommunications service within the State only if the rates are uniform and the terms and rates are not "unreasonably discriminatory." . . . [A] CLEC's ability to reasonably discriminate with respect to its rates and terms is limited to ... specific exceptions; anything else, is unreasonable discrimination. Moreover, ... a CLEC may only qualify for one of these exceptions if it first files its unique price offering with the Commission

Recommendation, pp. 12-13. The Administrative Law Judge concluded that AT&T's purposeful election to enter into an agreement with MCI—in which AT&T charged MCI less for intrastate switched-access than it charged other carriers and provided intrastate switched-access service to MCI on a unique separate basis, not pursuant to tariff under which the service was offered to all similarly situated carriers—was "illegal conduct" in which "AT&T purposefully engaged . . . [and] its actions were knowing and intentional." Recommendation, p. 14.

66. As noted earlier, the DOC initiated another complaint against AT&T and other parties in Docket No. P442/C-05-1282, filed December 30, 2005. This matter was resolved by stipulations confirming that the parties would honor filed tariffs on a prospective basis in April 2006.

67. Also, the DOC initiated another complaint against AT&T's subsidiary TCG in Docket No. P442/C-05-1282, filed June 7, 2006. On October 12, 2006, the PUC referred this complaint to the OAH for contested case proceedings.

Defendants' Ongoing Off-Tariff Deals in Filed-Rate States outside Minnesota

68. Although AT&T has agreed to abide by tariffed rates for intrastate switched-access service in Minnesota for agreements discovered and specifically challenged by the DOC, AT&T has not agreed to abide by tariffed rates for intrastate switched-access service for any other Filed-Rate States, and AT&T continues to enjoy the illegal fruits of off-tariff intrastate switched-access pricing agreements in all or at least most other Filed-Rate States.

69. AT&T continues to pursue tactics based upon the leverage afforded by the volume of its interexchange traffic rather than lawful compliance with filed tariffs. For example, on information and belief, while AT&T has begun to pay PrairieWave for its intrastate switched-access services at tariffed rates, AT&T has simultaneously determined to withhold other payments for which it is legally obligated. Thus, AT&T is honoring only the form of compliance with the PUC order while effectively flaunting requirements by transferring its withholding to other categories so that PrairieWave is given no net benefit by AT&T's ostensible compliance.

70. On information and belief, Defendants continue to pursue and enforce even the agreements with specific CLECs that operate in Minnesota, after those agreements have plainly been exposed as illegal contracts in Minnesota, so that even though it may be paying tariffed rates in Minnesota, it continues to pay the agreement rates for those same CLECs in all other jurisdictions, including other Filed-Rate States.

71. Defendants have no legitimate justification to use, enforce, or threaten to enforce their illegal off-tariff intrastate switched-access pricing contracts in Filed-Rate States.

72. Defendants' activities, and the activities of those with whom Defendants are in privity, violate statutes or cause violations of statutes in the Filed-Rate States, including but not limited to the following:

- a. Alabama: The laws that those activities violated include Ala. Code § 37-2-10.
- b. Arizona: The laws that those activities violated include Ariz. Rev. Stat. Ann. § 40-365, Ariz. Admin. Code §§ R14-2-1115 and R14-2-510, and Ariz. Rev. Stat. Ann. § 40-334.
- c. Arkansas: The laws that those activities violated include Ark. Code Ann. §§ 23-4-88-107, 23-4-105, 23-4-106, and 23-3-114(a).
- d. California: The laws that those activities violated include Cal. Pub. Util. Code §§ 489 (and General Order 96A adopted pursuant thereto), 556, and 558.
- e. Colorado: The laws that those activities violated include Colo. Rev. Stat. §§ 40-15-105 and 40-3-101.
- f. Connecticut: The laws that those activities violated include Conn. Stat. Ann §§ 42-110b, 16-247f, and 16-247b.
- g. Delaware: The laws that those activities violated include Del. Code Ann. tit. 26, § 304, Del. Code Regs §§ 10-800-020-3.5, 10-800-050-48.1, 10-800-050-5.2.1, and Del. Code Regs § 10-800-050-6 and Del. Code Ann. tit. 26, § 303.
- h. Florida: The laws that those activities violated include, but are not limited to, Fla. Stat. §§ 501.204, 364.04, 364.08, and 364.09.
- i. Georgia: The laws that those activities violated include Ga. Code Ann. §§ 46-2-25, 46-5-164, and 46-5-166.

- j. Iowa: The laws that those activities violated include Iowa Code §§ 476.4 and 476.101.
- k. Kansas: The laws that those activities violated include Kan. Stat. Ann. §§ 66-109, 66-1,190, 66-1,189, and 66-154a.
- l. Kentucky: The laws that those activities violated include Ky. Rev. Stat. Ann. § 278.160.
- m. Louisiana: The laws that those activities violated include La. Competition Reg. § 401(A).
- n. Maryland: The laws that those activities violated include Md. Code Ann., Pub. Util. Cos. § 4-202.
- o. Massachusetts: The laws that those activities violated include Mass. Gen. Laws 93A § 2, 159 § 19 and 116 § 14, and orders entered pursuant thereto.
- p. Minnesota: The laws that those activities violated include Minn. Stat. §§ 325F.67, 325F.69, 237.07, 237.035, 237.74, 237.09, 237.60, and Minn. R. 7811.2210.
- q. Mississippi: The laws that those activities violated include Miss. Code Ann. § 77-3-35.
- r. Missouri: The laws that those activities violated include Mo. Stat. §§ 392.220, Mo. Code Regs tit. 4 § 240- 3.545, and Mo. Stat. § 392.200.
- s. Nebraska: The laws that those activities violated include Neb. Rev. Stat. Ann. § 86-143.
- t. Nevada: The laws that those activities violated include Nev. Rev. Stat. Ann. §§ 598.969, 598.0923, and 704.061 through 704.0130.

- u. New Jersey: The laws that those activities violated include N.J. Stat. Ann. § 56:8-2, N.J. Admin. Code §§ 14:1-4, 14:10-5.3 through 14:10 10-5.11, and 48:3-1.
- v. New Mexico: The laws that those activities violated include N.M. Stat. §§ 57-12-2, 57-12-3, and 63-9A-8.1.
- w. New York: The laws that those activities violated include N.Y. Pub. Serv. L. §§ 92, N.Y. Comp. Codes R & Regs tit. 16 § 720-1.3, and N.Y. Pub. Serv. Law § 91.
- x. North Carolina: The laws that those activities violated include N.C. Gen. Stat. §§ 62-133.5 and 62-134.
- y. North Dakota: The laws that those activities violated include N.D. Cent. Code §§ 51.15-02, 49-05-05, 49-21-04, 49-04-07, 49-21-07, and 49-21-10.
- z. Oklahoma: The laws that those activities violated include Okla. Stat. §§ 165:55-5-1 and 165:55-5-2.
- aa. Pennsylvania: The laws that those activities violated include 66 Pa. Cons. Stat. Ann. §§ 1302, 1303 and 1304.
- bb. Rhode Island: The laws that those activities violated include R.I. Gen. Laws §§ 39-3-10, 39-3-11, 39-2-2, 39-2-3, and 39-2-4.
- cc. South Dakota: The laws that those activities violated include S.D. Stat. §§ 37-24-6, 49-31-12.2 49-31-19, 49-31-4, 49-31-4.2, and 49-31-11, and S.D. Admin. R. 20:10:27:06 and 20:10:27:17.
- dd. Tennessee: The laws that those activities violated include Tenn. Code Ann. § 65-5-102 and Tenn. Comp. R. & Regs. 1220-4-1-.03 to .04.

- ee. Texas: The laws that those activities violated include Tex. Util. Code § 52.251 and Tex. PUC Subst. R. 26.89(a)(3).
- ff. Vermont: The laws that those activities violated include Vt. Stat. Ann. § 225.
- gg. Virginia: The laws that those activities violated include Va. Code Ann. §§ 56-479.2(b), 56-236, 56-237, and 56-234.
- hh. West Virginia: The laws that those activities violated include W. Va. Code §§ 24-3-1, 24-3-2, and 24-3-5, W. Va. Code R. §§ 150-2-2, 150-2-7, 150-2-16, 150-2-28, 150-6-9, and 150-6-15.
- ii. Wyoming: The laws that those activities violated include Wyo. Stat. Ann. §§ 37-15-204, 37-15-404, and 37-15-404.

Effects of Defendants' Off-Tariff Deals

73. Qwest brings this action to obtain relief for harm that cannot be remedied in any other forum. Qwest has incurred loss of market share in the wholesale market for intrastate inter-exchange telephone service as a direct result of AT&T's practices since 1998. There is no adequate remedy for such damages to be had in the administrative agencies in the Filed-Rate States.

74. AT&T gained competitive advantages by exploiting evasion and secrecy in states that depended upon the filed rates for uniformity and even-handed, non-discriminatory treatment of competitors. In other words, IXCs like Qwest, which complied with the lawful requirements to pay the tariffed rates for intrastate switched access, were put at a disadvantage in the face of AT&T's conspiracy to deceive regulators, CLECs, the public, and competitors.

75. Defendants have no right to create wealth for themselves by exploiting a regulatory regime with illegal practices inuring to the exclusive benefit of Defendants. In the words of Mr. Doyle:

AT&T, like other businesses, has an incentive to maximize shareholder wealth. This is generally healthy for the marketplace. However, that does not mean that a company can choose to create wealth by violating the law if it is unlikely that it will be caught, and even if caught, any penalty is unlikely to be as great as the benefit received.

Doyle Rebuttal, p. 4.

76. Defendants have no right to profit by their illegal conduct in Minnesota or in any other state that employs a comparable tariff filing requirement for switched-access services offered by CLECs. In the words of Mr. Doyle:

There is value to regulatory certainty in the marketplace and regulatory certainty is created when all competitors are confident that, if they operate in compliance with the law, they will be operating on a level playing field and will not be disadvantaged by their honesty. AT&T's discriminatory tactics, if anything, created financial hardship on those companies that did not have the economic advantage of an illegal contract, and would create a disincentive for such companies to invest.

Doyle Rebuttal, p. 19.

77. Defendants' conduct has enabled them to gain unfair and illegal advantage at the expense of their competitors. In the words of Mr. Doyle:

[N]ot all IXCs engaged in such contracts. Thus, only the very few IXCs that also obtained contracts with the same beneficial terms could compete effectively with each other. IXCs without contracts are clearly harmed. IXCs with fewer contracts are also harmed. If competition suffers, consumer benefits achieved through competition will also suffer. Only through non-discrimination by application of the tariffed rates for access services are IXCs effectively competing with one another.

Doyle Rebuttal, p. 20.

78. Defendants have harmed consumers by achieving their desired rate reductions through their illegal self-help measures rather than through appropriate regulatory channels. The IXC market is highly competitive and, as costs decline, prices for consumers tend to decline as well. However, because the Defendants secured secret cost reductions, market forces operated differently for those IXCs like Qwest whose costs were kept higher as they complied with filed rates. Mr. Doyle provided an additional perspective:

In the P421/C-90-1184 and P999/C-93-90 dockets, AT&T was required to pass through the access charge savings to consumers through lower toll rates. Interexchange carriers would prefer that there be no regulatory requirement to reduce their toll rates if access rates are reduced. However, a pass-through was agreed to in the course of negotiations to reach a settlement in these previous cases. Thus, access charge reductions reached through the regulatory process, if a pass through of cost savings is required, does not have the same financial benefit to AT&T as access charge reductions achieved, as AT&T has done, through the unfiled agreements.

Doyle Testimony, *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched-Access Services*, July 28, 2006. In fact, AT&T's actions actually compounded the illegal consequences insofar as AT&T obtained authority to impose the ISCF upon its customers by representing that it was paying tariffed rates that it was in fact not paying.

79. AT&T was able to exploit the benefits of their bilateral off-tariff agreements. They were in a position to hoard the gains made possible by their mutual deception, because competitors in the marketplace, including Qwest, were driven to higher prices by incurring the full costs required by following the filed tariffs. Thus, since AT&T engaged in a conspiracy of self-help, it deprived the public consumers of the true benefit of open and fair competition.

80. Not only was the public harmed by the bilateral off-tariff agreements of AT&T, but so also were competitors such as Qwest that paid tariffed rates to AT&T and to other CLECs with whom AT&T had secret deals. In the words of Mr. Doyle:

[T]here are a significant number of competitors in the interexchange market. In a competitive market, price moves toward cost and no individual company has the ability to establish the market price. . . . If a competitor is able to achieve a cost advantage that is not achievable by others, profit margins (if any) will be squeezed Obtaining a cost advantage from a self-help scheme can significantly harm competitors and reduce the benefits that legitimate competition brings to consumers.

Doyle Testimony, p. 21. Mr. Doyle also explained:

[C]ompanies can compete on non-price factors, such as quality of service. The issue of discrimination resulting from the contract should legitimately consider cost and non-cost factors. Even though AT&T and MCI may not have changed prices during the term of the contract[s], to the extent the margin between price and cost increased, the contract created a competitive advantage. To the extent the company [such as AT&T and MCI] could afford to improve service quality since access costs were reduced, the contract created a competitive advantage.

Doyle Rebuttal, p. 21. Further,

If one company has a sweetheart deal that no other company has, that company may use that cost advantage to directly improve the company's net income. The prices charged by competitors cannot squeeze out excessive profits if the underlying costs, over which a carrier has no control, are not the same. Over the long term, companies must keep their service prices above costs to stay in business. If a company is able to obtain a cost advantage, that company may simply flow that advantage to its bottom line.

Doyle Rebuttal, pp. 23-24. Defendants have exploited their series of sweetheart off-tariff deals in Filed-Rate States to impose illegal harm upon Qwest.

81. There is no legitimate competitive benefit in Defendants' practices of breaking the law to secure gains, nor is there any competitive benefit in Defendants' practices to discriminate against other IXCs (apart from the co-conspiring IXC with which they conspired).

82. Defendants' practices have caused direct and indirect harm to Qwest through an unfair competitive advantage, price manipulations, exploiting unlawful and hidden cost savings, causing a loss of market share, and other direct and consequential harm.

Claims

Count One

Statutory Claims for Violation of Tariffing and Related State Law Requirements

83. The allegations of paragraphs 1 through 82 are incorporated herein as if fully restated.

84. Defendants have engaged in violations of law in Filed-Rate States with respect to their off-tariff intrastate switched-access pricing agreements.

85. Defendants have engaged in, procured, assisted, aided, abetted, encouraged or conspired in the violations of law knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

86. Defendants' conduct constitutes anti-competitive acts or practices in connection with Defendants' provision of telecommunications services.

87. Qwest has suffered substantial harm as a result of Defendants' violations of law in Filed-Rate States in an amount yet to be determined.

88. Qwest is entitled to recover damages and other relief, including attorneys' fees, for the violations of law of the Filed-Rate States with respect to Defendants' unfiled, off-tariff agreements for special pricing for intrastate switched-access service pursuant to applicable statutes, including but not limited to the following:

- a. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arizona pursuant to the law of Arizona, including without limitation, Ariz. Rev. Stat. Ann. § 40-423, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

- b. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Arkansas pursuant to the law of Arkansas, including without limitation, Ark. Code Ann. § 4-88-113, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- c. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of California pursuant to the law of California, including without limitation, Cal. Pub. Util. Code § 2106 and California Public Utilities Commission Decision No. 77406, 71 Cal. P.U.C. 229, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- d. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Colorado pursuant to the law of Colorado, including without limitation, Colo. Rev. Stat § 40-7-102, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- e. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Connecticut pursuant to the law of Connecticut, including without limitation, Conn. Stat. Ann § 42-110g, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

- f. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Delaware pursuant to the law of Delaware, including without limitation, Del. Code Ann. tit. 6, §§ 2513, 2525 and 2533, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- g. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Florida pursuant to the law of Florida, including without limitation, Fla. Stat. §§ 501.204 and 501.211, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- h. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Georgia pursuant to the law of Georgia, including without limitation, Ga. Code Ann. § 46-2-90, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- i. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Kansas pursuant to the law of Kansas, including without limitation, Kan. Stat. Ann. §§ 66-176 and 66-178, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- j. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Massachusetts pursuant to the law of Massachusetts, including without limitation, Mass. Gen. Laws ch. 93A, §§ 2 and 11, and,

by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

- k. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Minnesota pursuant to the law of Minnesota, including without limitation, Minn. Stat. §§ 325F.67, 325F.69, 325D.13, and 8.31, subd. 3a.
- l. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Missouri pursuant to the law of Missouri, including without limitation, Mo. Stat. § 392.350, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- m. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Nevada pursuant to the law of Nevada, including without limitation, Nev. Rev. Stat. Ann. §§ 41.600(e), 598.0923, 598.9694, and 598.969, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- n. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Jersey pursuant to the law of New Jersey, including without limitation, N.J. Stat. Ann. § 56:8-2.12 and 56.8-19, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- o. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New Mexico pursuant to the law of New Mexico, including without limitation, N.M. Stat. § 57-12-10, and, by way of supplementation

or in the alternative, under remedial or procedural provisions in the forum state.

- p. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of New York pursuant to the law of New York, including without limitation, N.Y. Pub. Serv. Law § 93 and 349, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- q. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of North Dakota pursuant to the law of North Dakota, including without limitation, N.D. Cent Code § 49-05-10, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- r. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Pennsylvania pursuant to the law of Pennsylvania, including without limitation, 66 Pa. Cons. Stat. Ann. § 3309, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- s. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Rhode Island pursuant to the law of Rhode Island, including without limitation, R.I. Gen. Laws §§ 39-2-7, 39-2-8, and 39-1-22, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

- t. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of South Dakota pursuant to the law of South Dakota, including without limitation, S.D. Stat. § 37-24-31, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- u. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the commonwealth of Virginia pursuant to the law of Virginia, including without limitation, Va. Code Ann. § 56-479.2(b), and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- v. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of West Virginia pursuant to the law of West Virginia, including without limitation, W. Va. Code §§ 24-4-7 and 24-4-3, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.
- w. Plaintiff is entitled to relief as a result of Defendants' unlawful activities in the state of Wyoming pursuant to the law of Wyoming, including without limitation, Wyo. Stat. Ann. § 37-12-208, and, by way of supplementation or in the alternative, under remedial or procedural provisions in the forum state.

89. Qwest is entitled to judgment for damages caused by Defendants' violations in an amount to be determined by the trier of fact.

Count Two
Misrepresentation, Omission or Fraud

90. The allegations of paragraphs 1 through 89 are incorporated herein as if fully restated.

91. AT&T has made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made express or implied statements of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

92. AT&T has made indirect representations of material fact to the effect that it was paying tariffed rates for intrastate switched-access service in Filed-Rate States. And, AT&T has procured actions by, assisted, encouraged, or acted in concert in a common design with CLECs with the result that CLECs have made indirect representations of material fact to Qwest, regulators, the public and other parties to the effect that they were charging tariffed rates for intrastate switched-access service in Filed-Rate States.

93. AT&T has endorsed or confirmed representations of material fact made by others to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States.

94. The statements made directly or indirectly, implied, endorsed or confirmed, to the effect that AT&T was paying tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading. And, the statements to

the effect that CLECs were charging tariffed rates for intrastate switched-access service in Filed-Rate States were false or omitted facts necessary to make them not misleading.

95. AT&T knew or should have known that its statements of material fact and those procured, assisted, encouraged and in common with CLECs were false or misleading.

96. AT&T made misstatements of material fact, and procured, assisted, encouraged, and acted in common with CLECs and others with whom it was in privity in misstatements of material fact, in order to induce reliance upon those misstatements by others including, but not limited to, Qwest.

97. Qwest actually and justifiably relied upon the misstatements of fact by AT&T and those with whom AT&T was in privity.

98. Qwest has suffered damages in an amount yet to be determined through its reliance upon the direct and indirect misstatements of fact by AT&T and those with whom AT&T was in privity.

99. Qwest is entitled to judgment for damages caused by the violations of law frauds and misrepresentations engaged in, procured by, assisted, encouraged, and made in concert with, for, and by AT&T in an amount to be determined by the trier of fact.

Count Three
Conspiracy to Violate Tariffing Requirements

100. The allegations of paragraphs 1 through 99 are incorporated herein as if fully restated.

101. CLECs, including AT&T and MCI, which have entered into off-tariff agreements with Defendants for special pricing for intrastate switched-access service, have violated applicable statutes, regulations, orders and other laws in the Filed-Rate States.

102. Defendants have combined, conspired and agreed with MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

103. The conspiracy or conspiracies have involved unlawful purposes or lawful purposes to be achieved by unlawful means.

104. Defendants have engaged in overt acts in furtherance of the conspiracy or conspiracies.

105. Defendants have engaged in the violations of law and the conspiracy or conspiracies for such violations, knowing that their conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

106. Qwest suffered substantial harm as a result of Defendants' conspiracy or conspiracies with CLECs in an amount yet to be determined.

107. Qwest is entitled to judgment for damages caused by the violations of law Defendants' conspiracy or conspiracies with MCI and CLECs and other parties in an amount to be determined by the trier of fact.

Count Four
Aiding and Abetting the Violations of Tariffing Requirements

108. The allegations of paragraphs 1 through 107 are incorporated herein as if fully restated.

109. Defendants have aided and abetted MCI and CLECs and other parties to procure the violations of law by the CLECs in the Filed-Rate States in their exercise of economic leverage, refusal to pay tariffed rates, negotiations, demands, and agreements with the CLECs for special pricing for intrastate switched-access service.

110. Defendants acted under a common design to violate the law or to encourage and assist violations of law by the CLECs.

111. Defendants have purposefully engaged in the violations of law and the aiding and abetting of such violations knowing that their unlawful conduct would and did afford them with an unfair and groundless competitive advantage over Qwest.

112. Qwest suffered substantial harm as a result of MCI's, CLECs' and other parties' violations of law and the Defendants' aiding and abetting of such violations in an amount yet to be determined.

113. Qwest is entitled to judgment for damages caused by the violations of law by MCI, CLECs and other parties and the aiding and abetting of such violations.

114. Qwest is entitled to judgment for damages caused by the violations of law by Defendants with MCI, CLECs and other parties in an amount to be determined by the trier of fact.

Count Five
Declaratory Judgment and Injunctive Relief

115. The allegations of paragraphs 1 through 114 are incorporated herein as if fully restated.

116. Defendants have violated applicable statutes, regulations, orders, and other laws in the Filed-Rate States directly or indirectly with respect to their agreements for off-tariff special pricing for intrastate switched-access service.

117. Qwest is entitled to a declaration that Defendants have violated applicable law in the Filed-Rate States with respect to off-tariff intrastate switched-access charges and rates.

118. Qwest is entitled to a declaration that Defendants are obligated to comply with filed tariffs for intrastate switched-access service.

119. Qwest is entitled to a declaration that Defendants' off-tariff agreements for special pricing for intrastate switched-access service have been and are void, illegal and unenforceable in the Filed-Rate States.

120. Qwest is entitled to an injunction requiring Defendants to abide by filed tariffs with respect to intrastate switched-access service in the Filed-Rate States without evasion or offset.

WHEREFORE, Qwest demands judgment against Defendants:

1. For declaratory and injunctive relief against Defendants;
2. For damages in an amount yet to be determined greater than \$50,000;
3. For attorneys' fees, costs and other relief as is allowed by applicable laws; and
4. For such other and further relief as the Court may deem just and proper.

Dated: January 29, 2007

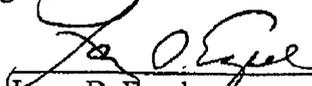
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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subdivision 2, to the party against whom the allegations in this pleading are asserted.



Larry D. Espel

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