BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	DOCKET NOS. UT-031459
	)	and UT-031626 (consolidated)
COMCAST PHONE OF	)	
WASHINGTON, LLC	)	
	)	
	)	**AT&T'S RESPONSE TO**
	)	**SUMMARY DETERMINATION**
	)	**MOTION OF QWEST CORP.**
……………………………………………….	)	

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") provide this Response To the Summary Determination Motion of Qwest Corporation ("Qwest") in the above-captioned proceedings. In support of its Response, AT&T states as follows:

INTRODUCTION

1. On December 5, 2003, Qwest, among others, filed Motions for Summary Determination in the above-captioned proceedings.

2. In a nutshell, Qwest's desire is to have the Commission impose unnecessary reporting requirements upon "sizeable" competitors in the name of regulatory parity. Qwest's Motion further claims there exists "no issues of material fact" such that "the moving party is entitled to the relief requested as a matter of law."[1]

3. In its Response, below, AT&T will discuss why Qwest's position is incorrect and should not be adopted by the Commission.

---

[1] Qwest Motion at 3, ¶ 5.

RESPONSE

4. Contrary to the Governor's mandate, as attached to AT&T's Motion for Summary Determination,[2] Qwest's Motion fails to reveal any record upon which the Commission may rely in adopting Staff's ever widening definition of Class A and B carriers and its application to competitors. Qwest simply ignores the customary interpretation of Class A and B providers; likewise, it ignores the Legislature's understanding of those distinctions as well. The Commission, on the other hand, does not have, as Qwest apparently does, the luxury to ignore the Governor or the Legislature.

5. Rather, the Commission's objective is clear. Regulation, in the name of the regulatory parity that Qwest seeks, violates State statutes.[3] The Commission must regulate competitive carriers flexibly and minimally. In fact, creation of the Class A and B distinctions themselves undermines Qwest's parity argument even among incumbents—large incumbents are more heavily regulated than, for example, the WITA members.[4]

---

[2] Exhibit K, Governor's Executive Order 97-02, attached to AT&T's Motion for Summary Determination filed December 5, 2003, in the above-captioned dockets.

[3] *See* RCW 80.36.320 & RCW 80.36.300(6)(requiring that the Commission permit "flexible regulation of competitive telecommunications companies and services.").

[4] Excerpt from the audio tape of the Senate hearing during the 1995 Session on HB 1744, by Steve McLellan of the WUTC:

> The purpose is to streamline paperwork required of the states small telecommunications companies.
>
> "WITA raised concerns over paperwork burdens imposed on smaller telecommunications companies, so we began to look at whether the cost benefit was really in proportion and concluded that it was not. That the info we were requiring on a regular basis was not helpful enough in terms of regulation or would be material we could create on demand if needed. Our main goal in working with WITA was to protect monopoly rate payers and we believe we can do it with the reduced reporting requirements in the bill and are pleased to endorse it.

6. The creation of the Class A and B distinctions among incumbents is clear evidence, not only that the distinction applies to incumbents, but also that regulatory parity is not the Commission's goal. In fact, the Original Notice, WSR 02-12-055, regarding the proposed rule revision for Chapter 480-120, filed May 30, 2002 explains:

> 2. Regulatory Fairness Act Requirements: Administrative rules implemented by state agencies can have a disproportionate impact on small businesses, compared to large business, simply because of the size of those businesses. This disproportionate impact may affect competition, innovation, employment, economic growth, and threaten the very existence of some small businesses. Thus, the Regulatory Fairness Act, chapter 19.85 RCW, was enacted with the intent of reducing any disproportionate impact of state administrative rules on small businesses.
>
> The Regulatory Fairness Act requires agencies to prepare an SBEIS if the proposed rule will impose "more than minor costs on businesses in an industry." An agency must then compare the costs of compliance with the proposed rule for large and small businesses within an industry, and then consider how to mitigate any disproportionate impact on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs fifty or fewer employees.
>
> 3. Background: Pursuant to chapter 19.85 RCW, staff determined that it was necessary to prepare an SBEIS for revisions to the rules in Docket No. UT-990146, as the proposed rules may impose more than minor costs on telecommunications companies operating in Washington state. However, almost all telecommunications companies operating in Washington state are not "small" businesses as defined by the Regulatory Fairness Act. Under the telecommunications laws, specifically RCW 80.04.350, a telecommunications company is considered to be "small" if it serves fewer than 2% of the state's access lines, i.e., fewer than about 80,000 access lines. Even a small telecommunications company typically has more than the fifty employees that define a "small business" under the Regulatory Fairness Act.
>
> Because the commission engages in economic regulation of the telecommunications industry, the economic impact of its regulation is integrated directly into its decision process. The statutory objective of the agency is to ensure that telecommunications companies offer service at prices and terms that are fair, just, reasonable, and sufficient. These terms, taken together, have come to mean that the commission must provide regulated companies with a

> reasonable opportunity to earn a fair profit on their business. Rates for regulated services are based on costs and reasonable profit, so requirements that increase costs for the regulated company can ultimately lead to increased rates by that company. The ultimate impact of changes in regulations therefore falls on the customers of the regulated company more than on the regulated company itself.

The regulatory study in this instance was directed at Qwest, Verizon and other incumbent telecommunications companies and their respective customers, not at competitors.

7. Further, Qwest's idea that "sizeable" competitors should be subject to the same regulation that former monopolist and market dominant carriers face is simply incorrect. "Sizeable" competitors do not, by any stretch of the imagination or facts, need the additional costs imposed by unnecessary service quality reporting requirements. At last report, Washington incumbents held 3,553,994 access lines compared to the aggregate access line counts of all competitors at 406,750.[5] The notion that "sizeable" competitors account for some large measure of customers left "unprotected" by regulatory service quality oversight[6] belies a complete misunderstanding of the role of regulation, at best. At worst, such an assertion is an ill-disguised attempt to impede competitors through misuse of the regulatory process. As noted by the FCC in its Triennial Review Order ("TRO"), competitors face significant cost disadvantages to incumbents.[7] Why add more to that disadvantage here?

8. Finally, Qwest's assertion that "no issues of material fact exist" is merely a misplaced assertion in this context. The question with respect to the interveners, including Qwest, in these proceedings is not whether Comcast has 2 % of the total access lines in the State, but rather, whether the Class A and B designations were ever intended

---

[5] *FCC Local Competition Report,* as of December 31, 2002, Table 7.
[6] Qwest Motion at 7, ¶ 14.
[7] *See e.g.,* TRO at ¶¶ 76 – 91.

by the Legislature and the Commission to apply to competitive carriers. The answer to this question is "no, Class A and B designations were never intended to apply to competitors." Considering that the rules themselves demand service quality based upon a network architecture *that does not exist for the competitors*, it's hard to imagine that the Commission could interpret them as applicable to competitors.[8]

9. Moreover, as revealed in **Exhibit A** attached hereto, the February 2002 draft of the rule deletes the use of the term "LEC," that WorldCom had complained about in its comments cited by Qwest,[9] and replaces it with the Class A and B language that was understood to mean incumbents at the time of the rulemaking.[10]

CONCLUSION

10. For the foregoing reasons, AT&T requests that the Commission refuse to adopt Staff's expanding interpretation of the Class A and B distinctions in these dockets.

Submitted this 23rd day of December, 2003.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

By: ______________________________

Mary B. Tribby
Letty S.D. Friesen
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6475

---

[8] WAC 480-120-535(4) requiring reporting of held orders by "central office." Competitors do not employ "central office" type network architecture.

[9] Qwest Motion at 5, ¶ 10.

[10] Although Qwest cites Sprint's comments in its Motion, Sprint is both and incumbent and competitor and appears to have largely been discussing the construction requirements.