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**Before the  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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AT&T CORP., and AT&T	)	
COMMUNICATIONS OF THE PACIFIC	)	
NORTHWEST, INC.,	)	
	)	
Complainants,	)	<b>Docket No. UT-04</b> _____
vs.	)	
	)	
QWEST CORPORATION,	)	<b>COMPLAINT</b>
	)	
Respondent.	)	
	)	
	)	

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Pursuant to RCW 80.04.110, 80.54.030 and 80.54.070, AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc. (collectively "AT&T"), bring the following Complaint against Qwest Corporation ("Qwest"). In support of the Complaint, AT&T alleges as follows:

**PARTIES**

1. Complainant AT&T is registered to provide intraexchange and interexchange telecommunications services in the State of Washington and is classified as a competitive telecommunications company. Copies of AT&T's competitive classification are attached hereto as Exhibits 1 and 2.
  
2. Respondent Qwest provides long distance and local exchange telecommunications services in the State of Washington and is an incumbent local exchange carrier ("ILEC") under federal and state law.

## JURISDICTION AND VENUE

3. Jurisdiction over this dispute is properly held by the Commission pursuant to RCW 80.04.110, 80.04.140, 80.54.020, and 80.54.030. The State of Washington has certified to the Federal Communications Commission ("FCC") that it regulates the rates, terms and conditions for pole attachments, which includes conduits. *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd. 1498 (1992), attached hereto as Exhibit 3; RCW 80.54.010 *et seq.*

4. Qwest owns or controls conduit in the State of Washington. Such conduit is used for purposes of wire communications.

5. AT&T owns communications facilities that occupy Qwest's conduit in Washington.

6. Qwest and AT&T are direct competitors in the provisioning of local and long distance telecommunications service in Washington.

7. AT&T has a right of access to Qwest conduit on just, reasonable and non-discriminatory rates, terms and conditions. *See* 47 U.S.C. § 224; RCW 80.54.20, 80.54.070; *see also* RCW 80.36.170 and 80.36.180.

8. AT&T occupies Qwest-owned conduit in Washington pursuant to "General License Agreement for Conduit Occupancy Between Pacific Northwest Bell Telephone Company and The American Telephone and Telegraph Company for the State of Washington," dated July 11, 1988" ("Conduit License Agreement") and Licenses executed pursuant thereto. *See* Conduit License Agreement attached hereto as Exhibit 4; Licenses attached hereto as Exhibit 5.

9. AT&T also occupies Qwest-owned conduit pursuant to an "Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunication Services Between Qwest Corporation and AT&T Communications of the Pacific Northwest, Inc. in the State of Washington" ("Interconnection Agreement" or "Agreement") dated January 20, 2004 and approved by the Commission on February 6, 2004. *See* Interconnection Agreement attached hereto as Exhibit 6; *see also In the Matter of the Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle with Qwest Corporation Pursuant to 47 U.S.C. Section 252*, Docket No. UT-033035, Order No. 05 (Feb. 6, 2004). Prior to the adoption of this Agreement, the parties had operated under an alternative Interconnection Agreement dated July 24, 1997. *See* Agreement for Local and Wireline Network Interconnection and Service Resale ("1997 Interconnection Agreement"), attached hereto as Exhibit 7.

#### **GENERAL ALLEGATIONS**

10. AT&T currently occupies approximately 223,031 feet of Qwest's conduit in the State of Washington. *See* Qwest Conduit Licenses (Exh. 5); Qwest Conduit Invoices, attached hereto as Exhibit 8.

11. The Conduit License Agreement does not establish rates. Rather, the individual Licenses issued pursuant to the Agreement set forth the rates. *See* Qwest Conduit Licenses (Exh. 5).

12. Similarly, the 1997 Interconnection Agreement between the parties did not set forth a specific rate for conduit rental. Instead, the Agreement requires Qwest to provide AT&T "equal and non-discriminatory access to poles, ducts, conduit, entrance facilities, and ROW and any

other pathways on terms and conditions equal to that provided by [Qwest] to itself or to any other Person.” 1997 Interconnection Agreement at § 47.1 (Exh. 7).

13. Qwest makes its conduit rental rate publicly available in its Statement of General Available Terms and Conditions (“SGAT”) on file at the Washington Utilities and Transportation Commission. *See* Washington SGAT § 10.7.11, attached hereto as Exhibit 9; *In the Matter of the Petition of Qwest Corp., to Modify its Statement of Generally Available Terms and Conditions*, Docket No. UT-043026, Order No. 1 (May 26, 2004) (approving Qwest’s modification of its SGAT and the conduit rental rate set forth therein).

14. Qwest represents that the SGAT conduit rate set forth below is calculated based on the FCC’s conduit rate formula. *See* Washington SGAT at note 4 (Exh. 9).

15. The current Interconnection Agreement between the parties states that Qwest’s conduit rental fees “are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission . . . .” The Agreement sets forth the conduit occupancy rate by attaching a copy of Qwest’s January 2004 SGAT as an Exhibit to the Agreement.<sup>1</sup> *See* Interconnection Agreement at 10.8.3 and Exhibit A (Exh. 6).

16. The conduit rate produced by the FCC’s formula—and Qwest’s current advertised SGAT rate—is a just and reasonable rate consistent with 47 U.S.C. § 224 and RCW 80.54.040.

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<sup>1</sup> The January 2004 SGAT, attached as Exhibit A to the Interconnection Agreement, states that Qwest’s conduit occupancy rental fee is \$0.39 per foot per year. *See* Interconnection Agreement at Exh. A, § 10.7.11. Qwest has since revised its SGAT and adjusted the conduit rental fee to \$0.35. *See* Washington SGAT at § 10.7.11 (Exh. 9); *In the Matter of the Petition of Qwest Corp., to Modify its Statement of Generally Available Terms and Conditions*, Docket No. UT-043026, Order No. 1 (May 26, 2004) (updating the 2004 and 2005 rates for pole attachments and innerduct occupancy in accordance with rate changes directed by the FCC).

17. However, Qwest currently charges AT&T rates ranging from \$1.65 to \$3.78 per foot per year to occupy its conduit in Washington. *See* Conduit Invoices attached hereto as Exhibit 8.

18. Qwest's publicly available SGAT identifies Qwest's conduit rental rate as \$0.35. *See* Washington SGAT Spreadsheet § 10.7.11 (Exh. 9). Upon information and belief, this is a just and reasonable rate for conduit occupancy. Although this is the publicly filed rate and approximates levels that AT&T believes would be generated under the FCC's conduit formula, Qwest continues to charge AT&T the higher \$1.65 to \$3.78 per foot rates.

19. Beginning in February 2000 and continuing through December 2003, AT&T attempted to re-negotiate Qwest's conduit rental rates to be consistent with the rates that would be produced under the FCC's formula and/or the rates at which Qwest offers conduit to other telecommunications companies. AT&T's attempts have not been successful.

#### **CLAIMS FOR RELIEF**

20. This Commission is charged with ensuring that the rates, terms and conditions of occupancy of Qwest conduit are just and reasonable. *See* RCW 80.54.020. In addition, the Commission holds broad authority to ensure that Qwest's rates, rules, regulations, and practices are not "unjust, unreasonable, unjustly discriminatory, unduly preferential, or in anywise in violation of law." RCW 80.36.140; *accord* RCW 80.36.170-180 & 186. Qwest also is obligated to charge rates that are on file with, and have been approved by, the Commission. RCW 80.36.130. Qwest also has obligations under federal law to ensure that its rates for access to its conduit are nondiscriminatory. *See, e.g.,* 47 U.S.C. §§ 224 and 271(c).

21. The conduit occupancy rates that Qwest charges AT&T are five to 10 times higher than the rates in Qwest's SGAT on file with the Commission. The rates that Qwest charges AT&T, therefore, are not fair, just, reasonable, and sufficient in violation of RCW 80.54.020.

22. Qwest competes directly with AT&T in providing local exchange and long distance telecommunications service in the state of Washington. Qwest has granted itself an undue preference and has subjected AT&T to undue and unreasonable prejudice and competitive disadvantage by forcing AT&T to pay conduit occupancy rates well above the SGAT rate on file with the Commission in violation of RCW 80.36.186 and RCW 80.54.020.

23. Qwest has granted other telecommunications companies an undue preference and has subjected AT&T to undue and unreasonable prejudice and competitive disadvantage by charging AT&T conduit occupancy rates that are well above the SGAT rate that Qwest charges other similarly situated companies in violation of RCW 80.36.170 and RCW 80.54.020.

24. Qwest's practice of offering its facilities to other similarly situated telecommunications carriers at the SGAT rate, while charging AT&T conduit rates in excess of the SGAT rate is discriminatory in violation of RCW 80.36.180.

25. Qwest's practice of charging AT&T a conduit occupancy rate different than the SGAT rate on file with the Commission violates RCW 80.36.130.

26. Finally, Qwest's authority to provide long-distance telecommunication service in Washington is conditioned on Qwest affording competitors nondiscriminatory access to Qwest's network, including nondiscriminatory access to its "poles, ducts, conduits and rights-of-way." 47 U.S.C. § 271(c)(2)(B)(iii). By refusing to provide AT&T with conduit at the publicly

available SGAT rates, Qwest is not providing nondiscriminatory access to its "poles, ducts, conduits and rights-of-way," in violation of federal law. *See, e.g.*, 47 U.S.C. §§ 224 and 271(c).

### **REQUEST FOR RELIEF**

WHEREFORE, AT&T respectfully requests the following relief:

1. A Commission Order:
  - a. declaring unlawful Qwest's Washington conduit rates of \$1.65 to \$3.78 per foot of innerduct per year, and terminating the \$1.65 to \$3.78 rates that Qwest currently is charging AT&T;
  - b. ordering Qwest to charge AT&T an annual conduit rental rate equal to the SGAT rate of \$0.35 per foot of innerduct; and
  - c. ordering Qwest to refund to AT&T all amounts paid in excess of rates charged to other telecommunications carriers dating back to July 24, 1997, when Qwest committed to provide AT&T with nondiscriminatory rates;
  - d. awarding attorneys fees to AT&T dating back to February, 2000, when AT&T notified Qwest of the discrepancy between the rates that Qwest is currently charging AT&T and the rates Qwest charges other telecommunications carriers, to the extent authorized under applicable law;

2. Such other or further relief as Commission deems fair, just, reasonable and sufficient.

Respectfully submitted this 4<sup>th</sup> day of August, 2004.

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