

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

IN THE MATTER OF THE PETITION FOR  
ARBITRATION OF AT&T  
COMMUNICATIONS OF THE PACIFIC  
NORTHWEST AND TCG SEATTLE WITH  
QWEST CORPORATION PURSUANT TO  
47 U.S.C. § 252(b)

DOCKET NO. UT-033035

**REBUTTAL TESTIMONY**

**OF**

**PHILIP LINSE**

**ON BEHALF OF**

**QWEST CORPORATION**

**OCTOBER 10, 2003**

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1

## I. INTRODUCTION

2 **Q. PLEASE STATE YOUR NAME, TITLE AND ADDRESS.**

3 A. My name is Philip Linse. I am employed by Qwest Corporation ("Qwest") as a  
4 Director, Technical Regulatory in the Local Network Organization. My business  
5 address is 700 W. Mineral, Littleton, Colorado, 80120.

6 **Q. ARE YOU THE SAME PHILIP LINSE WHO FILED DIRECT**  
7 **TESTIMONY IN THIS DOCKET?**

8 A. Yes, I am.

9

## II. PURPOSE AND BACKGROUND

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to respond to the Direct Testimony of Michael  
12 Hydock filed on behalf of AT&T. My rebuttal testimony addresses the issue of  
13 abandonment (Disputed Issue 22). I will explain why the Commission should  
14 approve Qwest's proposed contract language for the issue I address as well as the  
15 basis of Qwest's opposition to language that AT&T proposes for the parties'  
16 interconnection agreement.

17

## III. ABANDONMENT (Disputed Issue 22)

18 **Q. WHAT IS QWEST'S PROPOSED LANGUAGE FOR THIS DISPUTED**  
19 **ISSUE?**

20 A. Qwest proposes the following language for Issue 22:

21 8.2.1.31 If Qwest finds in the course of business, evidence to substantiate  
22 that any equipment or property of CLEC has been abandoned or left  
23 unclaimed in or at any Premises, Qwest shall notify CLEC in writing of the  
24 existence of such equipment or property and CLEC shall have thirty (30)

1 Days from the date of such notice to remove such equipment or property  
2 from Premises. If, prior to the termination of the thirty (30) Day period,  
3 CLEC disputes that the equipment or property of CLEC has been  
4 abandoned or left unclaimed at the Premises, CLEC shall deliver to Qwest  
5 written notice of such dispute (the "Resolution Request") and commence  
6 Dispute resolution proceedings pursuant to Section 5.18 of this Agreement.  
7 If no Resolution Request has been delivered, then thirty (30) Days after the  
8 date of the notice all equipment or property of CLEC not removed from the  
9 Premises shall conclusively be deemed and construed to have been  
10 transferred, deeded, and assigned by CLEC to Qwest and may be  
11 appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest  
12 without further notice to CLEC and without obligation to account therefor,  
13 and CLEC shall reimburse Qwest for all reasonable expenses incurred in  
14 connection with the storage or other disposition of such equipment or  
15 property. If CLEC delivers a Resolution Request but fails to commence  
16 dispute resolution proceedings pursuant to Section 5.18 of this Agreement  
17 or to otherwise resolve the dispute with Qwest, as evidenced by a writing  
18 executed by Qwest, within thirty (30) Days of the delivery of such  
19 Resolution Request, then thirty Days after the date of the Resolution  
20 Request, all equipment or property of CLEC not removed from the Qwest  
21 Premises shall conclusively be deemed and construed to have been  
22 transferred, deeded, and assigned by CLEC to Qwest and may be  
23 appropriated, sold, stored, destroyed and/or otherwise disposed of by Qwest  
24 without further notice to CLEC and without obligation to account therefor,  
25 and CLEC shall reimburse Qwest for all reasonable expenses incurred in  
26 connection with the storage or other disposition of such equipment or  
27 property. CLEC hereby releases and agrees to defend, indemnify, and hold  
28 harmless Qwest from and against any and all costs, expenses, claims,  
29 judgments, damages, liability or obligation arising out of or in connection  
30 with Qwest's exercise of any or all of its rights under this Section 8.2.1.31.  
31 Notwithstanding the provisions of this Section, where CLEC has submitted  
32 a Decommissioning Application, the provisions of Section 8.2.1.22 of this  
33 Agreement, shall govern the equipment or property of CLEC and not this  
34 Section 8.2.1.31 unless CLEC fails to remove its equipment or property in  
35 accordance with the terms of Section 8.2.1.22 of this Agreement.  
36

37 **Q. ON PAGE SEVEN LINES 22 THROUGH 24 MR. HYDOCK CLAIMS**  
38 **THAT QWEST SHOULD NOT BE ALLOWED TO "UTILIZE THE**  
39 **ABANDONMENT PROVISIONS ARBITRARILY AND/OR IN BAD**

1           **FAITH TO FORCE A COMPETITOR INTO DISPUTE RESOLUTION**  
2           **WITHOUT SOME LEGITIMATE BASIS." HAS QWEST EVER**  
3           **ARBITRARILY OR IN BAD FAITH ASSSERTED THAT A CLEC**  
4           **ABANDONED ITS PROPERTY OR OTHERWISE ATTEMPTED TO**  
5           **FORCE A CLEC INTO DISPUTE RESOLUTION REGARDING**  
6           **ABANDONMENT?**

7    A.    No. I am unaware of any situation in which a CLEC has challenged Qwest's  
8           determination and requested dispute resolution associated with abandonment.  
9           Qwest's experience with abandoning CLECs has been with CLECs that choose to  
10          walk away from their collocation rather than to remove the equipment. Mr.  
11          Hydock admits in his direct testimony on page 5, lines 11 and 12 that "AT&T  
12          does not plan to "abandon" its equipment at the Qwest premises." Thus, AT&T  
13          has no need to nit pick Qwest's proposed language. As required by Qwest's  
14          proposed language, Qwest does not have an unfettered ability to declare CLEC  
15          equipment abandoned: any CLEC that believes Qwest has incorrectly claimed  
16          abandonment can, if necessary, initiate dispute resolution. As discussed in my  
17          direct testimony, Qwest should not be limited and burdened by the requirement to  
18          first wait until a CLEC is three months past due with its collocation charges to  
19          notify abandoning CLECs of abandoned equipment and to reclaim abandoned  
20          space on Qwest's premises when there may be other valid indications that a CLEC  
21          has abandoned its collocation site.

22    **Q.    WITH REGARDS TO THE CONTENT OF THE NOTIFICATION, ON**  
23    **PAGE 8 LINES 10 THROUGH 12 MR. HYDOCK CLAIMS THAT A CLEC**  
24    **COULD SPEND A SUBSTANTIAL PORTION OF THE THIRTY DAY**

1           **PERIOD UNDERSTANDING THE REASON FOR QWEST'S**  
2           **DETERMINATION AND THE LOCATION OF THE AFFECTED**  
3           **COLLOCATION SITE. WHAT IS YOUR RESPONSE TO AT&T'S**  
4           **CONCERN?**

5       A.     AT&T's concern is absurd. It is ridiculous to suggest that Qwest might submit an  
6           abandonment notification that would not identify the abandoned site. Further,  
7           CLECs should be presumed to have some knowledge of their collocation sites.  
8           CLECs either abandon their equipment or they do not abandon their equipment. It  
9           seems unlikely that it would take a CLEC 30 days to determine if, in fact, it has  
10          abandoned equipment or to figure out why Qwest may believe the CLEC has  
11          abandoned the site. If a CLEC has not abandoned its equipment, Qwest has  
12          provided protection through dispute resolution.

13          Regardless, as I have addressed in my direct testimony, the information that  
14          should be contained in the notification of abandonment, such as the location of  
15          abandoned equipment, is a process issue that is more appropriately addressed  
16          through the Change Management Process ("CMP") than in contract language.  
17          Once process issues become ingrained in contract language, Qwest and CLECs  
18          are hampered in their abilities to modify processes in response to experience or  
19          future events. There is no need for AT&T's notice specifications in the agreement  
20          and, therefore, the Commission should not order it.

21       **Q.     MR. HYDOCK'S TESTIMONY SUGGESTS THAT INVOKING OR**  
22           **USING THE DISPUTE RESOLUTION PROCESS IS OVERLY**  
23           **BURDENSOME TO CLECS. DO YOU AGREE?**

1 A. No. The parties' negotiated dispute resolution language appears in Section 5.18.  
2 Contrary to the impression Mr. Hydock makes in his testimony, the dispute  
3 resolution process is easily invoked and straight-forward. If a CLEC were to  
4 dispute a notice of abandonment from Qwest, it only need submit a written  
5 dispute resolution request to initiate the dispute resolution process. The process  
6 provides initially for negotiation of the dispute in an attempt to resolve the dispute  
7 and, therefore, does not proceed immediately to an arbitration hearing. Thus,  
8 under the dispute resolution process, the parties can certainly attempt to address  
9 any dispute on whether the CLEC has abandoned equipment early on through  
10 negotiation and thereby avoid arbitration.

11 **Q ON PAGE 8 LINES 15-17, MR. HYDOCK STATES THAT QWEST MUST**  
12 **"MITIGATE" ITS DAMAGES. WHAT IS YOUR RESPONSE?**

13 A. A CLEC that has abandoned its equipment has already determined that it will cost  
14 more to remove or dispose of the equipment than the equipment is worth. In this  
15 scenerio, therefore, "mitigation of damages" should not be at issue because the  
16 CLEC has already decided to impose the costs of removal or disposal onto Qwest.  
17 AT&T's language, requiring cumbersome showings of "mitigation" and "offsets"  
18 of expenses, does not recognize these realities of an abandonment situation.  
19 Instead, AT&T's language imposes additional burdens and showings on Qwest,  
20 when Qwest is simply attempting to make the collocation space available quickly  
21 for other carriers. Furthermore, AT&T's language will lead to disputes between  
22 parties about what constitutes a "reasonable effort" to "mitigate" damages.

1 **Q. ON PAGE 9 LINES 7 THROUGH 10 MR. HYDOCK CONTENDS THAT**  
2 **QWEST SHOULD PROVIDE ACCOUNTING TO CLECS. WHAT IS**  
3 **YOUR RESPONSE?**

4 A. Although Qwest maintains that an accounting will rarely be necessary or  
5 requested, Qwest can agree to the following portions of AT&T's proposed  
6 language: "Qwest shall not be obligated to provide CLEC with an accounting of  
7 expenses Qwest seeks to recover from CLEC, unless CLEC requests in writing  
8 such an accounting and agrees to bear the reasonable expenses incurred by Qwest  
9 in preparing the same." In all other respects, the Commission should endorse the  
10 Qwest proposed language.

11 **IV. CONCLUSION**

12 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?**

13 A. The Commission should adopt Qwest's proposed language as presented in my direct  
14 and rebuttal testimony. Qwest's proposed language provides an efficient,  
15 economical, and flexible means to make abandoned collocation space available to  
16 all CLECs and itself as well as providing CLECs the protection they seek.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes, it does.