

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for)
Arbitration of)
)
AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST AND TCG)
SEATTLE,) Docket No. UT-033035
)
With)
)
QWEST CORPORATION)
)
Pursuant to 47 U.S.C. Section 252(b))
_____)

REBUTTAL TESTIMONY OF
MICHAEL HYDOCK
ON BEHALF OF AT&T COMMUNICATIONS OF THE
PACIFIC NORTHWEST, INC. AND TCG SEATTLE
ON DISPUTED ISSUES 22, 33, and 34

OCTOBER 10, 2003

I. ISSUE 22

1 **Q. ON PAGE 8 OF MR. LINSE'S TESTIMONY, HE INDICATES THAT**
2 **AT&T HAS NO REASON TO OPPOSE QWEST'S LANGUAGE. DO YOU**
3 **AGREE AND WHY?**

4 A. No, I do not agree. AT&T never intends to abandon its equipment at Qwest
5 premises. That does not mean, however, that AT&T should agree to an onerous
6 contract provision that is subject to abuse. As such, AT&T is extremely
7 concerned that Qwest's language gives Qwest the incentive to consider any
8 CLEC's, including AT&T's, property abandoned by allowing Qwest to
9 unilaterally determine abandonment without objective criteria, by providing a lack
10 of meaningful notice to the CLEC who Qwest has deemed has "abandoned" its
11 equipment, and by affording the right to Qwest to sell such equipment with no
12 responsibility to mitigate its damages.

13 **Q. HAS QWEST TAKEN ACTION TO ALLEVIATE AT&T'S CONCERNS**
14 **ON THIS ISSUE?**

15 A. No, Qwest's actions have actually exacerbated AT&T's concerns on this issue
16 because Qwest has refused to negotiate changes to its proposed language. AT&T
17 looks at this issue as one of incentives. In other words, there should be nothing in
18 the interconnection language that should give Qwest the incentive to invoke the
19 "abandonment" language unless there is an objective indication that abandonment
20 has actually taken place. Qwest's proposed language contains not a single
21 objective criterion. AT&T has always been willing to alter its proposal (and in
22 fact has modified its earlier proposals) as long as an objective measure of

1 abandonment is included as a safeguard. Qwest has steadfastly refused to
2 negotiate equitable language on this issue.

3 **Q. PLEASE COMMENT ON MR. LINSE'S STATEMENT THAT "QWEST'S**
4 **PROPOSED LANGUAGE AND PROCESS AFFORDS ABANDONING**
5 **CLECS EVERY OPPORTUNITY TO PROTECT THEIR INTERESTS IN**
6 **THE EVENT THEY DISPUTE THAT THEY HAVE ABANDONED THE**
7 **SITE" FOUND ON PAGE 7 OF HIS DIRECT TESTIMONY.**

8 A. If a CLEC truly abandons its collocation premises, then dispute resolution may be
9 an appropriate course to resolve differences. However, Mr. Linse's statement
10 misses the mark. The statement starts from a conclusion that the CLEC
11 abandoned its collocation premises. The problem here is no one has any idea how
12 Qwest comes to the conclusion that a CLEC has abandoned its collocation
13 premises, least of all AT&T. The language proposed by Qwest leaves it entirely
14 to Qwest's judgment. It is not clear whether Qwest even has any clear criteria in
15 place internally that its personnel who actually determine abandonment can
16 follow. AT&T has requested such information and it has not been produced.

17 **Q. PLEASE RESPOND TO QWEST'S COMPLAINT THAT AT&T'S**
18 **PROPOSED LANGUAGE REQUIRES NINETY CONSECUTIVE DAYS**
19 **OF NONPAYMENT OF UNDISPUTED COLLOCATION PAYMENTS?**

20 A. From AT&T's viewpoint, this is a straightforward objective rule that would be
21 applied at the time Qwest asserts abandonment. Qwest has been unwilling to
22 agree to, or even propose, an objective standard for when abandonment occurs.
23 To protect its interests, AT&T must propose some mechanism that curbs the
24 unfettered freedom Qwest seeks in determining abandonment. The fact that
25 Qwest refuses to accept this simple standard concerns AT&T even more.

1 **Q. MR. LINSE STATES ON PAGE 14 OF HIS DIRECT TESTIMONY, “IT IS**
2 **UNCLEAR WHAT WOULD CONSTITUTE AN ‘UNDISPUTED’ OR**
3 **‘DISPUTED’ FEE’ IN CRITICIZING THE AT&T PROPOSED**
4 **LANGUAGE ON ABANDONMENT.” CAN YOU COMMENT ON MR.**
5 **LINSE’S CONFUSION?**

6 A. Yes. I find it curious that Mr. Linse is unclear about what the use of the word
7 “undisputed” means when AT&T refers to undisputed monthly recurring charges
8 in its proposed language. Qwest, in its SGAT, and AT&T and Qwest in these
9 negotiations have agreed to the use of the word “undisputed” in several
10 provisions. In fact, the proposed agreement filed by AT&T in this arbitration
11 contains no fewer than five agreed to provisions that use the word “undisputed” in
12 the context of charges billed under the interconnection agreement.¹ The fact that
13 Qwest has no confusion about the use of this term in five agreed to provisions of
14 the proposed interconnection agreement should carry much more weight than Mr.
15 Linse’s confusion over the use of the term on an issue where Qwest has been
16 unwilling to negotiate.

17 **Q. ON PAGE 16 OF MR. LINSE’S TESTIMONY, HE INDICATES THAT**
18 **THE INTERCONNECTION AGREEMENT IS NOT THE MOST**
19 **APPROPRIATE PLACE TO IDENTIFY WHAT SHOULD BE**
20 **CONTAINED IN THE NOTICE OF ABANDONMENT. CAN YOU**
21 **EXPLAIN MR. LINSE’S CONCERN OVER THE FACT THAT AT&T**
22 **PROPOSES THAT CERTAIN INFORMATION BE INCLUDED IN ANY**
23 **NOTICE OF ABANDONMENT QWEST SENDS TO AT&T?**

24 A. No, I cannot explain Mr. Linse’s concern. As with the use of the word
25 “undisputed” in other provisions of the proposed interconnection agreement, the
26 proposed agreement contains many provisions that specify the content of

¹ Sections 5.4.3, 5.4.6, 8.2, 8.4.1.8.3 and 21.1.4. These provisions are reprinted in Exhibit MH-4.

1 notification. In AT&T's abandonment proposal, AT&T proposes that any Qwest
2 abandonment notice include the following information:

3 (i) the identification of the affected Collocation Premises, (ii) the
4 bases for Qwest's determination of abandonment, (iii) a point of
5 contact at Qwest regarding the claimed abandonment and (iv)
6 notice that CLEC has no less than thirty (30) Days to remove its
7 equipment or property.

8 In numerous sections of the proposed interconnection agreement there are detailed
9 notice provisions that have been agreed to by Qwest for a long time. For
10 example, Section 5.1.3.1 states, in part:

11 such notice shall include: 1) identification of the impairment
12 (including the basis for identifying the other Party's facilities as the
13 cause of the impairment), 2) date and location of the impairment,
14 and 3) the proposed remedy for such impairment for any affected
15 service.

16 In addition, Section 8.2.3.9 states, in part:

17 such notice will include: (1) identification of the specific
18 equipment and/or installation not in compliance; (2) the NEBS 1
19 safety requirement that is not met by the equipment and/or
20 installation; (3) the basis for concluding that CLEC equipment
21 and/or installation does not meet the safety requirement; and (4) a
22 list of all equipment that Qwest locates at the Premises in question,
23 together with an affidavit at testing that all of that equipment meets
24 or exceeds the safety standard that Qwest contends CLEC's
25 equipment fails to meet.

26 In addition, Section 11.23 states, in part:

27 such notice shall include: 1) identification of the non-compliant
28 work activity, 2) identification of the safety regulation violated,
29 and 3) date and location of safety violation.

1 There are several other provisions in the proposed interconnection agreement that
2 contain similar requirements as to content of notification. See Exhibit MH-5
3 attached hereto. Perhaps Mr. Linse is simply unfamiliar with the interconnection
4 agreement negotiated between the parties and the SGAT filed by Qwest in the
5 State of Washington. Nonetheless, Mr. Linse as a witness for Qwest cannot
6 legitimately make the argument that AT&T's desire for minimum notice content
7 does not belong in the interconnection agreement, when Qwest has already agreed
8 many times to the inclusion of such language in many other provisions of the
9 proposed agreement.

10 **II. ISSUE 33**

11 **Q. WHAT IS THE ESSENTIAL DIFFERENCE BETWEEN MR. HYDOCK'S**
12 **(AT&T) AND MR. EASTON'S (QWEST) POSITIONS ON**
13 **ALTERNATIVELY BILLED CALLS?**

14 A. AT&T is proposing language that would move the processing, billing, and
15 collection of all alternatively billed calls to a separate billing and collection
16 agreement between Qwest and AT&T for all calls that terminate to AT&T local
17 subscribers. This is a subject that requires negotiations that fully address cost and
18 risk. Qwest, on the other hand, makes a substantive, but deficient, proposal for
19 inclusion in the interconnection agreement. Qwest proposes to bifurcate the
20 treatment according to the following plan: (i) for AT&T subscribers served by an
21 AT&T switch, Qwest accepts AT&T's proposal to have a separate agreement
22 cover the billing of these calls; but (ii) for cases where AT&T uses UNE-P or

1 resale, Qwest would require AT&T to accept Qwest's incomplete and inadequate
2 terms, which vary depending on whether Qwest's intrastate tariff applies.

3 **Q. IN ITS TESTIMONY OFFERED BY MR. EASTON, HAS QWEST**
4 **PROVIDED ANY REASON WHY THE ARRANGEMENTS FOR**
5 **BILLING AND COLLECTION OF ALTERNATIVELY BILLED CALLS**
6 **SHOULD BE CONTAINED WITHIN THE PROPOSED**
7 **INTERCONNECTION AGREEMENT (ICA)?**

8 A. No. Qwest is proposing that AT&T abide by certain processes flows and
9 remuneration for billing and collection of these calls for the subscribers
10 provisioned using UNE-P or resale. Qwest desires to bill AT&T for alternatively
11 billed calls via the Daily Usage Feed. Qwest would bill AT&T the full amount of
12 a non-Qwest alternatively billed call and credit AT&T 3 cents per call for
13 AT&T's costs. For Qwest alternatively billed calls, Qwest would charge AT&T
14 the Qwest retail charge less the resale discount rate.

15 Qwest's proposal, while convenient for Qwest, should not be part of the ICA. In
16 the first instance, Qwest has already agreed that AT&T and Qwest should have a
17 separate billing and collection agreement for calls that terminate to an AT&T
18 customer serviced by an AT&T switch. There is nothing inherently different
19 between facilities-based customers and UNE-P customers in terms of the billing
20 and collection processes and work that AT&T needs to perform if that subscriber
21 uses the services of another carrier for some type of call, such as a collect call.

22 Qwest's proposal, moreover, unilaterally seeks to require certain terms and
23 conditions for these calls that have not been negotiated between the parties and
24 are not desired by AT&T. AT&T seeks to have all arrangements with Qwest for

1 billing and collection dealt with in the context of a separate agreement that
2 defines the flows, terms, conditions, allocation of risk and remuneration for all
3 alternatively billed calls, no matter what method AT&T uses to provision the
4 customer. AT&T would likely examine some of the process aspects proposed by
5 Qwest in its position, and may choose to use it or a variation of the flows.
6 However, AT&T wishes to be free to negotiate all of the details and the
7 remuneration of its costs in a separate agreement.

8 **Q. PLEASE EXPLAIN WHY YOU BELIEVE QWEST'S PROPOSAL FOR**
9 **ALTERNATIVELY BILLED CALLS IS INCOMPLETE AND**
10 **INADEQUATE.**

11 A. The Qwest proposal is incomplete because it provides three sentences that address
12 the only thing Qwest really cares about – being paid at a high rate without any
13 collection risk. It does nothing for AT&T, except expose it to costs of billing,
14 costs of collection and the risk of being unable to collect. These are all topics that
15 require negotiation. The compensation proposed by Qwest is also inadequate. In
16 my direct testimony, AT&T produced the “Alternate Billed Services ‘ABS’
17 Agreement” recently entered into between AT&T and SBC for thirteen states.
18 The terms in this contract are substantially better than the Qwest proposed
19 financial arrangement.

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III. ISSUE 34

2 **Q.**

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**HAS QWEST MODIFIED ITS PROPOSAL WITH RESPECT TO THE
TREATMENT OF BILLING CALLS MADE BY AT&T LOCAL
CUSTOMERS WHO USE QWEST AS THEIR INTRALATA TOLL
PROVIDER?**

6 **A.**

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Yes, Qwest has proposed language that would clarify that AT&T would not be authorized to offer Qwest as an LPIC when AT&T is the underlying local service provider. AT&T's staff is reviewing the proposal to see whether it comports with their needs.

10 **Q.**

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**IS THERE ANYTHING IN MR. FREEBERG'S'S TESTIMONY
REGARDING ISSUE 34 THAT YOU WISH TO ADDRESS?**

12 **A.**

Yes, Mr. Freeberg misframes the issue with the following statement:

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Although AT&T would propose forcing Qwest to develop mechanisms to bill the end user, it offers no contractual mechanism to provide Qwest the information necessary to do so. AT&T is the only local carrier that knows the current billing name and address for its end users. Under AT&T's proposal, Qwest would require this information to bill the end user, but AT&T does not offer any language to provide this information to Qwest. Without this information, Qwest would be unable to bill this call even if it undertook the considerable systems development to implement AT&T's proposal.

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First, this issue is about billing Qwest's long distance customers who happen to be AT&T local customers. Mr. Freeberg's accusation that AT&T is forcing Qwest to develop billing mechanisms is ludicrous. If Qwest has a customer, it is Qwest's responsibility to figure out how to bill those customers and collect the charges (or forego them if the cost of billing and collection is too high). If Qwest requires the assistance of another carrier, then Qwest should make a reasonable

1 proposal and engage in negotiations. Qwest has not done that. Qwest **told** AT&T
2 in negotiations that Qwest will bill AT&T for these toll calls. Qwest was
3 unwilling to negotiate any other approach or any compensation for AT&T.

4 Second, it is disingenuous and misleading for Qwest to now state that AT&T
5 “offers no contractual mechanism to provide Qwest the information necessary” to
6 bill its end users. Never once in negotiations did Qwest ever request “current
7 billing name and address information” for AT&T local end users who are Qwest
8 toll customers. This is information that AT&T is prepared to provide to Qwest
9 for a fee. However, this Qwest assertion is a red herring. Qwest doesn’t want this
10 information, because then Qwest would have to use the information to bill its
11 customers. Qwest doesn’t want that. Qwest wants AT&T to be stuck with that
12 responsibility without adequately compensating AT&T for the service and the
13 risks associated with it.

14 In negotiation, AT&T has indicated that it is willing to enact a separate billing
15 and collection agreement with Qwest in which AT&T would receive fair
16 remuneration for acting as Qwest’s billing and collection agent. As I argued
17 regarding alternatively billed calls, a billing and collection agreement that makes
18 AT&T Qwest’s agent for collection of long distance services provided by Qwest
19 is not required by the Act and such provisions should not be the subject of an
20 arbitration under Section 252 of the Act. AT&T is willing, ready and able to
21 negotiate an equitable billing and connection agreement. However, Qwest is
22 attempting to shove an inequitable solution down AT&T’s throat under the guise

1 of \$252 negotiation. Qwest has not been willing to negotiate any type of billing
2 and collection agreement related to this issue and if it wants AT&T's services
3 should do so forthwith.

4 **Q. HAS ANY ADMINISTRATIVE BODY REVIEWED THIS ISSUE?**

5 A. Yes, this issue was arbitrated in Minnesota. The Arbitrator's Report, after
6 considering Qwest's "wholesale discount" remuneration scheme,² found:

7 The parties should negotiate a separate agreement to address this
8 issue. Requiring AT&T to do the billing without some
9 consideration is unfair...AT&T's language should be adopted,
10 along with language to the effect that it is an interim provision and
11 the parties should use their best efforts to develop a separate billing
12 and collection agreement regarding such end users to supercede the
13 AT&T language.³

14 **IV. CONCLUSION**

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY**

16 A. Yes, it does.

² Arbitrators' Report at ¶209.

³ *Id.* at ¶213.