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October 30, 2006

### **VIA EMAIL & FEDERAL EXPRESS**

Ms. Carole J. Washburn, Executive Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: *AT&T v. Qwest*, Docket No. UT-051682

Dear Ms. Washburn:

AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, and TCG Oregon (collectively, "AT&T"), respectfully submit the attached decision by the Eighth Circuit in *Connect Comms. Corp. v. Southwestern Bell Tel., L.P.*, No. 05-3698 (8<sup>th</sup> Cir., Oct. 27, 2006) as supplemental authority in support of AT&T's opposition to Qwest Corporation's ("Qwest") Petition for Interlocutory Review of Commission Order No. 04 ("Petition") and Motion for Summary Determination ("Motion").

AT&T's Amended Complaint asserts that Qwest has breached its interconnection agreements with AT&T. In Order No. 04 (at paragraphs 27-28), the Commission found that AT&T's contract claim is governed by the Washington state statute of limitations. Qwest sought review of that decision as well as a summary determination on the contract claim. Relying in part on a decision by the Oregon Commission, Qwest argued that AT&T's contract claim – a claim requiring the interpretation and enforcement of an interconnection agreement – should be treated as arising under federal law and therefore should be governed by the two-year limitations period in 47 U.S.C. § 415. AT&T has argued that its contract claim arises under state law and that the Commission therefore was correct in applying the state limitations period for a breach of contract action, and that the Oregon decision was both wrong and irrelevant.

*Connect* supports AT&T's arguments and refutes Qwest's by finding, in the context of a dispute over the interpretation and enforcement of an interconnection agreement, that (i)

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“[a]lthough federal law plays a large role in this dispute, the ultimate issue in this case – *interpretation of the Interconnection Agreement – is a state law issue*” (*Connect*, slip op. at 8-9 (emphasis added) (relying on *Southwestern Bell Tel. Co. v. Brooks Fiber Comms. of Oklahoma, Inc.*, 235 F.3d 493, 498 (10th Cir. 2000) (applying state law to interpretation dispute over the same interconnection agreement) and *Southwestern Bell Tel. Co. v. Public Utils. Comm'n of Texas*, 208 F.3d 475, 485 (5th Cir. 2000)); and (ii) one state commission’s determination regarding a claim based on an interconnection agreement does not bind another state commission, even when addressing the same claim and same agreement. *Connect*, slip op. at 16-17 (“[S]tate commissions are not bound by decisions reached by other state commissions, even in construing similar or identical terms.”) (relying on *Global NAPs, Inc. v. Mass. Dep’t of Telecomms. & Energy*, 427 F.3d 34, 48 (1st Cir. 2005)).

Please contact me if you have any questions regarding this submission.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

cc: Service List