

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	
	)	Docket No. UT-033044
QWEST CORPORATION	)	
	)	
To Initiate a Mass-Market Switching	)	AT&T'S MOTION TO STRIKE
and Dedicated Transport Case	)	PORTIONS OF THE REBUTTAL
Pursuant to the Triennial Review	)	TESTIMONY OF RACHEL
	)	TORRENCE
_____	)	

AT&T Communications of the Pacific Northwest, Inc., and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") move to strike portions of Rachel Torrence's Rebuttal Testimony and exhibits dated February 20, 2004.

**I. INTRODUCTION**

The Rebuttal Testimony of Rachel Torrence filed by Qwest Corporation ("Qwest") on February 20, 2004, goes beyond the scope of the rebuttal testimony.<sup>1</sup> Ms. Torrence's rebuttal testimony contains testimony and exhibits that should have been filed with her direct testimony at the beginning of the case, contains testimony that should have been filed as part of her response testimony, adds additional carriers as a trigger candidates, and now claims that several carriers are not only wholesale providers of dedicated transport but are self-provisioners as well. Not only do Qwest's actions make a mockery of the regulatory process, they are prejudicial to the parties. The parties are denied the opportunity to respond in testimony to claims that should have been made in Qwest's direct or response cases and are denied the opportunity to conduct discovery in preparation

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<sup>1</sup> Ms. Torrence's rebuttal testimony is the third piece of testimony filed by Ms. Torrence and is more accurately described as surrebuttal testimony. Ms. Torrence previously filed Direct Testimony on December 22, 2003, and Response Testimony of February 2, 2004.

of such testimony and the hearings.<sup>2</sup> The only way to prevent the extreme prejudice to the parties is to strike portions of Qwest's testimony and exhibits, or alternatively, provide sufficient time for the parties to conduct discovery and file another round of testimony.<sup>3</sup>

## **II. ARGUMENTS**

### **A. Qwest's Direct Case**

Qwest filed its direct case on December 22, 2003. Qwest identified 25 routes that it believes the triggers have been satisfied on. Due to the lack of supporting documentation, AT&T and some of the other competitive local exchange carriers ("Joint CLECs") conducted discovery to determine the bases of Qwest's trigger candidates.

AT&T asked a series of data requests of Qwest. For each wholesale trigger candidate and route AT&T asked Qwest to provide all data, information and documents in its possession that show, discuss or relate to whether a trigger candidate is operationally ready and willing to provide dedicated DS1, DS3 and dark fiber transport on a specific route and is making the dedicated transport widely available.<sup>4</sup> Qwest's response to AT&T 03-203 stated essentially that all data, information or documents that Qwest had were either in Ms. Torrence's direct testimony, contained on the web sites identified in Ms. Torrence's direct testimony, or contained on the web pages attached to the response. All the other responses referred to the response to AT&T 03-203 (a) – (i).<sup>5</sup>

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<sup>2</sup> The discovery turnaround is 14 business days. Even if AT&T were to prepare and serve discovery by February 27, the responses would not be received in time for use at the scheduled hearings on dedicated transport. Furthermore, a number of carriers are not parties to the proceeding so it is necessary to serve subpoenas on these carriers.

<sup>3</sup> Hearings could be held to cross exam witnesses on the transport testimony the same week the hearings are now scheduled for the batch hot cut testimony.

<sup>4</sup> See AT&T 03-205 to 03-287 and AT&T 08-434 to 08-473.

<sup>5</sup> A copy of Qwest's response to AT&T 03-203 (a) – (i) is attached to the Response Testimony of Anthony J. Giovannucci as AJG-5.

The Joint CLECs also sent a data request to Qwest asking that it provide for each CLEC and route identified on Qwest Exhibit RT-9HC, “a detailed explanation of the basis of Qwest’s assertion that CLEC has self-provisioned transport facilities, or offers wholesale transport services, on that route.” Joint CLECs 02-017. The Joint CLECs also asked for all documents or other evidence which Qwest relied on. Once again, Qwest referred to Ms. Torrence’s direct testimony and exhibits, identified a number of web sites and provided a number of web pages.<sup>6</sup> Qwest did not attach to its direct testimony, AT&T’s responses or the Joint CLECs’ responses, *any* of the CLECs’ responses to the Commission’s bench requests.

In Ms. Torrence’s rebuttal to testimony filed by AT&T, Integra and the Joint CLECs, Ms. Torrence attaches Exhibits RT-13HC, D1, Z6 and U4’s response to Bench Request No. 50; RT-14, MCI’s response to Bench Request No. 50; RT-15HC, I4’s response to Bench Request No. 50; RT-16HC, P4’s response to Bench Request No. 50; RT-14C, AT&T’s response to Bench Request No. 50; RT-18HC, Y7’s response to Bench Request No. 50; RT-19, C2’s response to Bench Request No. 50; RT-20HC, G2’s response to CLEC Question No. 20 (Bench Request 51); RT-21HC, Z4’s response to Bench Request No. 50; and RT-24HC, P6’s response to Bench Request No. 51. All of these requests are attached by Qwest to Ms. Torrence’s rebuttal testimony to support its direct case and support the inclusion of these carriers on Exhibit RT-9HC, Replacement Exhibit RT-9HC and RT-12HC. Only two of these exhibits, RT-13HC and RT-17HC, are arguably used as rebuttal exhibits. Three exhibits that are identified and discussed in the rebuttal testimony, RT-15HC, RT-16HC, and RT-20HC, should have been identified and discussed in Qwest’s

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<sup>6</sup> A copy of Qwest’s response is attached to the Response Testimony of Dean Fassett as Exhibit DRF-4.

direct case, and 5 exhibits (RT-18HC, RT-19HC, RT-21HC, RT-22HC and RT-24HC) are not even mentioned at all in Ms. Torrence's rebuttal.

The exhibits and the related testimony should have been filed as part of Qwest's direct case. Furthermore, Qwest should have provided the exhibits (bench requests) in response to AT&T's and the Joint CLEC's data requests asking for all documents Qwest relied on to support the trigger candidates. By not identifying the bench requests, AT&T and the Joint CLECs were led to believe that Qwest was not relying on the bench requests to support its case. By attaching bench requests to rebuttal testimony that Qwest should have attached to its direct case, and by failing to identify the bench requests in AT&T's and the Joint CLECs' data request responses, AT&T and other parties have been denied an opportunity to conduct discovery on the contents of the exhibits and file responsive testimony explaining why the exhibits do not support Qwest's case.<sup>7</sup> AT&T should not be prejudiced by Qwest's actions.

Therefore, AT&T respectfully requests that Exhibits RT – 14, 15, 16, 18, 19, 20, 21 22, and 24 be stricken. In addition page 13, lines 1-8; page 29, lines 23-24; page 30, lines 1-2; page 30, line 21; page 31, lines 1-3; and page 34, lines 1-8 should be stricken.

**B. Whether Dedicated Transport Includes Entrance Facilities and Switches**

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<sup>7</sup> Parties are only required to respond to testimony and exhibits submitted by a party. It would be ludicrous to suggest that a party must respond to every piece of discovery received in a case if it has not been put forth in support of a party's case.

In his direct testimony, Mr. Giovannucci states that a route does not qualify if the route passes through a CLEC switch or the traffic passes through a CLEC switch.<sup>8</sup> Ms. Torrence's response testimony does not respond at all to Mr. Giovannucci's claims. In his response testimony Mr. Giovannucci admittedly makes the same claim. In her rebuttal testimony, Ms. Torrence elects to respond to the claim made in Mr. Giovannucci's responsive testimony, the same claim he made in his direct testimony that Ms. Torrence chose to ignore.

There is not unanimity among the regional Bell operating companies on this issue. For example, SBC's witness in California testified "that there is no switching interposed along the [dedicated] transport route."<sup>9</sup> Accordingly, AT&T expressed its position on this issue in its direct testimony to determine if Qwest's position differed from AT&T and SBC's. By not responding in its responsive testimony on this issue, AT&T was led to believe that Qwest did not disagree with AT&T's (and SBC's) position. The question is an integral part of any analysis of qualifying routes and trigger candidates. As a result of Qwest's actions, AT&T has been denied the opportunity to respond to Qwest's position on whether routes that pass through switches should be eligible trigger candidate. AT&T specifically raised this issue in its direct case so it would have an opportunity to respond in rebuttal if Qwest disagreed with AT&T's position. AT&T should not be prejudiced by Qwest's failure to respond to AT&T's direct testimony in response testimony regarding this issue.

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<sup>8</sup> Direct Testimony of Anthony J. Giovannucci at 29-30.

<sup>9</sup> *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, Docket No. R.95-04-043; and *Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Docket No. I.95-04-044 (Triennial Phase), Direct testimony of Scott Alexander on Behalf of SBC California Regarding Dedicated Transport (Nov. 20, 2003 Cal. PUC) at 4.

Therefore, AT&T moves to strike page 6, lines 19-22; page 7, lines 1-24; page 8, lines 1-20 and page 9, lines 1-5.

**C. Exhibit RT-12HC**

In Ms. Torrence's direct testimony, Ms. Torrence provides a list of routes she believes qualify as trigger candidates. Exhibit RT-9HC. On January 16, 2004, Qwest filed a Replacement Exhibit RT-9HC. The replacement exhibit deletes some carriers, adds others and adds four more routes. After concerns were raised by AT&T, the Administrative Law Judge allowed carriers to file supplemental testimony on the new routes and changes as late as February 20, 2004.

In Ms. Torrence's rebuttal testimony, Ms. Torrence amends Replacement RT-9HC, although the new exhibit is marked as Exhibit RT-12HC. Once again, Qwest makes significant changes without explanation or any support.<sup>10</sup> Except for deleting a number of routes, all of the changes should have been reflected in Qwest Exhibit RT-9HC filed with its direct case.

**1. Z6**

Qwest has added Z6 to Routes 14 and 16 on RT-12HC as both a self-provisioner and wholesale provider of dedicated transport.<sup>11</sup> The only apparent justification is Exhibit RT-23. This exhibit does not provide any basis to add Z6 to these two routes because there is no reference at all in the exhibit to any specific routes. Qwest previously identified Z6

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<sup>10</sup> Qwest filed *no* discovery on AT&T or the Joint CLECs before it filed its direct testimony or its responsive testimony. It filed only limited discovery after the responsive testimony was filed. Therefore, Qwest cannot rely on any discovery responses it received to support its changes to exhibits.

<sup>11</sup> A fundamental question that is raised by Qwest's highly confidential Exhibits RT-9HC, Replacement RT-9HC and RT-12HC and that has not been addressed by the Commission is why the wholesale providers on the routes are marked as highly confidential. If the carriers are operationally ready and willing to provide other carriers dedicated transport on a route at wholesale on a widely-available basis, the information could not possibly be confidential. The only reason why Qwest has marked this information as highly confidential is because it *has not* made such a demonstration and it recognizes that it may be disclosing highly confidential CLEC information without any legal basis.

as a trigger candidate on Route 9. Since Z6 should have been included on Routes 14 and 16 as a part of its original case, and since Qwest has not provided any basis for adding Z6, AT&T moves to strike Z6 from Routes 14 and 16 on Exhibit RT-12HC.

## 2. TCG, D1, J1 and Z6

In Qwest's original Exhibit RT-9HC and its Replacement RT-9HC, Qwest identified the carriers it believed were self-provisioning dedicated transport and the carriers it believed were wholesale providers of dedicated transport. For example, TCG is identified *only* as a wholesale provider on a number of routes. D1, J1 and Z6 also are identified only as wholesale providers. On RT-12HC, Qwest now alleges that TCG, D1, J1 and Z6 self-provision dedicated transport on all of the same routes. If Qwest believed these companies self-provisioned dedicated transport, these allegations should have been reflected in its direct case. Qwest has not provided any basis to add these carriers as self-provisioners that did not exist at the time of its direct case. The corroborating information cited by Qwest in Exhibit RT-12HC are the answers to bench requests that were available before Qwest filed its direct testimony. By identifying these carriers as self-provisioners in its final testimony, AT&T and the parties are denied any opportunity to test Qwest's claims by serving data requests on the parties, and TCG and the other parties are denied the opportunity to submit testimony to rebut Qwest's claims.<sup>12</sup> This is extremely prejudicial to AT&T and the other parties.

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<sup>12</sup> The analysis for the self-provisioning trigger is not the same as the analysis for the wholesale trigger. For example, a wholesale provider may use unbundled dark fiber, activate and operate the fiber and qualify as a wholesale provider. *TRO*, ¶ 414. However, a carrier that self-provisions transport using unbundled network elements or special access acquired from Qwest will not qualify as a self-provisioner of dedicated transport. *TRO*, ¶ 407. See also, ¶¶ 329 & 333.

AT&T moves to strike RT-12HC to the extent it identifies TCG, D1, J1, and Z6 as self-provisioners of dedicated transport on Routes 1, 6, 7, 8, 9, 10, 11, 14, 16, 18, 19, 21, 22, 24, 26, 27 and 29.

**3. N7**

In Ms. Torrence's Exhibit RT-12HC, Qwest has added N7 as a self-provisioner and wholesale provider of dedicated transport on Routes 1, 6, 9, 10, 14, 16, 18, 19, 20, 22, 24 and 29. N7 is not identified *at all* on Exhibits RT-9HC and Replacement RT-9HC, and the corroborating information identified on RT-12HC are answers to bench requests that were available to Qwest before it filed its direct case. By adding N7 at this time, AT&T is denied the opportunity to conduct discovery of Qwest and file testimony rebutting Qwest's allegations.

AT&T moves to strike N7 from Routes 1, 6, 9, 10, 14, 16, 18, 19, 20, 24, 27 and 29.

**4. P4**

On Exhibit RT-9HC and Replacement RT-9HC, P4 is identified as a wholesale provider of dedicated transport on Routes 7 and 14. On RT-12HC, P4 is no longer identified as a wholesale provider and is now identified as a self-provisioner of dedicated transport.<sup>13</sup> Qwest's corroboration is RT-16HC. However, RT-16HC is P4's response to the Commission's bench request. If Qwest had made an error, which it claims was the basis of filing Replacement RT-9HC, Qwest should have made the change on Replacement RT-9HC, not on its final exhibit. AT&T and the other parties are denied the opportunity to

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<sup>13</sup> As noted earlier, the analysis to determine whether a carrier qualifies for the self-provisioning trigger is different than the wholesale trigger analysis.



conduct discovery and file responsive testimony on these new allegations. Once again, this is extremely prejudicial to AT&T and the other parties.

AT&T moves to strike P4 as a self-provisioner on Routes 7 and 14 on Exhibit RT-12HC.

**5. C2**

On Replacement Exhibit RT-9HC, C2 is identified as a self-provisioner of dedicated transport on Routes 8 and 14. On Exhibit RT-12HC, C2 is identified as both a self-provisioner and a wholesale provider of dedicated transport. Qwest's corroboration is RT-19, which is C2's response to the Commission's bench request. This information was available before Qwest filed its direct case. AT&T and the other parties are denied the opportunity to conduct discovery and file responsive testimony on these new allegations.

AT&T moves to strike C2 as a wholesale provider on Routes 8 and 14 on RT-12HC.

**III. CONCLUSIONS**

It is apparent from the Rebuttal Testimony of Rachel Torrence and the attached exhibits that Qwest has attempted to submit evidence to support its direct case that was available at the time Qwest filed its direct case. Because Qwest failed to provide any information to support Qwest's proposed routes, both AT&T and the Joint CLECs submitted discovery to determine the basis of Qwest's conclusions. Qwest did not cite to the CLEC responses to the Commission's bench requests in its responses to AT&T's and the Joint CLECs' data requests. Now, after AT&T and the Joint CLECs submitted extensive discovery to Qwest and the carriers identified by Qwest and filed all their

testimony, Qwest has once again changed the routes it claims meet the triggers and the carriers it claims are the trigger candidates.

The parties are placed in the position of attempting to refute Qwest's exhibits and testimony through cross examination. Not only is this is extremely prejudicial, it is a nearly impossible task. The parties are denied the opportunity to submit discovery on the new allegations and file to testimony to rebut what is in reality Qwest's direct case.

For the foregoing reasons, AT&T moves to strike the following portions of the testimony and exhibits:

1. Exhibits RT – 14, 15, 16, 18, 19, 20, 21 22, and 24; and page 13, lines 1-8; page 29, lines 23-24; page 30, lines 1-2; page 30, line 21; page 31, lines 1-3; and page 34, lines 1-8.
2. Page 6, lines 19-22, page 7, lines 1-24, page 8, lines 1-20 and page 9, lines 1-5.
3. Z6 from Direct Routes 14 and 16 on Exhibit RT-12HC.
4. TCG, D1, J1, and Z6 as self-provisioners of dedicated transport on Routes 1, 6, 7, 8, 9, 10, 11, 14, 16, 18, 19, 21, 22, 24, 26, 27 and 29 on Exhibit RT-12HC.
5. N7 from Routes 1, 6, 9, 10, 14, 16, 18, 19, 20, 24, 27 and 29.
6. P4 as a self-provisioner on Routes 7 and 14 on Exhibit RT-12HC.
7. C2 as a wholesale provider on Routes 8 and 14 on RT-12HC.

Only by striking the testimony and exhibits identified by AT&T will AT&T and the other parties' due process rights be recognized and upheld. In the alternative, AT&T seeks the right to conduct discovery and file additional testimony. The hearings would be moved to April during the week the hearings on batch hot cut testimony are scheduled to be held.

Respectfully submitted this 26<sup>th</sup> of February, 2004.

**AT&T COMMUNICATIONS OF THE  
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LOCAL SERVICES ON BEHALF OF TCG  
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