

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T COMMUNICATIONS OF THE	)	
PACIFIC NORTHWEST, INC.,	)	Docket No. UT-003120
	)	
Complainant,	)	AT&T'S RESPONSE TO QWEST'S
v.	)	MOTION TO AMEND ITS ANSWER
	)	TO INCLUDE A CROSS-
QWEST CORPORATION,	)	COMPLAINT FOR EMERGENCY
	)	RELIEF
Respondent.	)	
	)	

AT&T Communications of the Pacific Northwest, Inc. (“AT&T”) hereby responds to Qwest’s Motion to Amend Its Answer to Include a Cross-Complaint for Emergency Relief (“Qwest’s Cross-Complaint”). Keeping in mind that emergency relief is only appropriate when there is “an immediate danger to the public health, safety and welfare requiring immediate action by the (Washington Utilities and Transportation Commission),” WAC 480-09-510, AT&T denies that Qwest’s Cross-Complaint meets the requirements for obtaining emergency relief, instead presenting a sham issue of fact. For reasons explained in detail below and further detailed in AT&T’s Complaint and Request for Expedited Treatment (“AT&T’s Complaint”), AT&T would request that the Washington Utilities and Transportation Commission (the “Commission”) deny Qwest’s request for emergency relief and permanently enjoin Qwest from padlocking Network Interface Devices (“NID”)/Minimum Point of Entry (“MPOE”) terminals pursuant to RCW 80.36.140, RCW 80.36.260 and WAC 480-120-016 and permit AT&T to continue to access Multi-Dwelling Unit (“MDU”) wiring through NID/MPOE terminals until AT&T’s Complaint can be heard by this Commission in its entirety. If this Commission will not entertain such relief, this Commission should commence an evidentiary hearing before even contemplating the appropriateness of the relief sought by Qwest.

In the alternative, if this Commission believes that initiating an emergency adjudicative proceeding pursuant to RCW 34.05.479 and WAC 480-09-510 is warranted, such proceeding should include contemplation of emergency relief to AT&T on its Complaint pursuant to RCW 34.05.479 and WAC 480-09-510. Qwest acknowledges that its Cross-Complaint is directly related to AT&T's Complaint. Thus, all issues stemming from that Complaint should be considered by the Commission in the same proceeding. Thus, the Commission should hear this matter, in its entirety, in an extremely expedited manner.

#### I. STATEMENT OF RELEVANT FACTS

As Qwest acknowledges in its Cross-Complaint and as discussed in detail in AT&T's Complaint, AT&T has contracted with numerous customers in MDUs who seek AT&T's telecommunication services. Because AT&T is running **its own network** to the furthest feasible point in the MDU setting, AT&T merely needs access to the NID/MPOE Terminal, a technically feasible connection point usually owned or controlled by Qwest, to access MDU internal wiring.

The right for AT&T to access the internal wiring at the NID/MPOE access point is indisputably set out and mandated by Federal Communications Commission ("FCC") orders. *See* FCC Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (September 15, 1999) at ¶ 202 *et. seq.*; FCC First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57 (October 12, 2000) at ¶ 48. In addition, other state commissions have enforced

such rights. *See* Georgia Public Utilities Commission, *In re: Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.* Docket No. 10418-U; *In re: MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc.*, Docket No. 10135-U. Acting in direct contradiction to these orders, Qwest has demanded that AT&T engage in a lengthy, bureaucratic, and commercially coercive process which **does not** allow the legally mandated direct access to the NID/MPOE terminal.

To add insult to injury, besides disconnecting AT&T network conduit and wiring (a clear public safety issue), Qwest has padlocked an increasing number of NID/MPOE Terminals, thereby halting AT&T's ability to provide competitive telecommunications services to Washington consumers. Thus, it is through Qwest's unlawful actions that various Washington consumers are being forced to forgo competitive local telephone services.

## II. QWEST'S REQUESTED "EMERGENCY" REMEDY WILL CRIPPLE AT&T'S ABILITY TO LEGALLY PROVIDE COMPETITIVE TELECOMMUNICATIONS SERVICES

In its cross-complaint, Qwest conveniently petitions the Commission to enjoin AT&T from the legally mandated action of accessing the NID/MPOE terminal until AT&T's Complaint is addressed after being fully litigated in front of the Commission. With briefing on AT&T's "expedited" complaint not being completed until the beginning of August 2001, Qwest seeks to have this Commission establish an anti-competitive monopoly for it to provide MDU telecommunications services until the Commission grants AT&T injunctive relief, or until Qwest unilaterally decides that it wishes to

conform to legally mandated processes. Keeping in mind current legal and public policy precedent, the Commission cannot permit such an inequitable circumstance to persist.

If AT&T is barred from accessing NID/MPOE terminals until the completion of this docket, Qwest will have positioned itself to be the only entity providing telecommunications services in a vast majority of Washington MDUs. Besides the fact that such result would frustrate AT&T's attempt to provide competitive telecommunications services to Washington consumers who are desirous of such services, and that Qwest's position is entirely contrary to legal precedent, policy considerations mandate against this result. *See* NARUC Resolution Concerning Carrier Access to Multiple Tenant Environments. (Attached as Exhibit A).

Furthermore, Qwest is, at best, being surreptitious in its "cross-complaint." Qwest terms AT&T's actions of accessing inside wiring at the NID/MPOE Terminal as "access on terms and conditions which are not acceptable to Qwest." *See Qwest's Motion to Amend Its Answer to Include a Cross-Complaint For Emergency Relief* at ¶ 3. What is most telling is what Qwest's averment avoids; AT&T's actions of cross connecting to the NID/MPOE terminal are legally mandated as the technically feasible method for AT&T to gain access to inside wiring at MDUs regardless of how Qwest feels about it. *See e.g.* FCC Third Order at ¶¶ 205, 207, 216, 219, 223, 226, 230, 232, 237, 238, 239, 240.

As Qwest has been unwavering in demanding AT&T utilize unnecessarily burdensome and time-consuming interconnection methods which are contrary to relevant legal precedent,<sup>1</sup> AT&T has no choice but to cross-connect to the NID/MPOE terminal

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<sup>1</sup> Such advocacy is inexplicably geared toward Washington. Qwest has contradicted its position of requiring such a burdensome and time-consuming interconnection method in other states.

without a negotiated protocol with Qwest. However, as explained in greater detail in AT&T's Complaint, AT&T has consistently communicated with Qwest indicating when and where it requires NID/MPOE terminal access as well as its access protocol. Except on one occasion where Qwest personnel, after prolonged delay, responded by unilaterally insisting on Qwest's lengthy "Field Connection Point" process, AT&T's requests have been unanswered by Qwest.

It is for these reasons that AT&T was forced to seek Commission relief in its initial Complaint. Under the current scheduling order, AT&T's complaint will not be fully considered until August 2001. In the meantime, however, there is no lawful basis for Qwest to bar access to the NIDs/MPOE terminal. Accordingly, AT&T should not be denied access to Qwest NIDs/MPOE terminals throughout this proceeding, **and** it is Qwest which should be enjoined from continuing to place padlocks on NID/MPOE terminals as requested in AT&T's Complaint. Otherwise, AT&T will continue to suffer substantial and unnecessary damages and Washington MDU consumers will not be afforded competitive services. The only other equitable alternative is to have this matter heard **in its entirety** on an emergency basis.<sup>2</sup>

### III. QWEST'S CROSS-COMPLAINT PRESENTS A SHAM ISSUE OF FACT

Instead of working with AT&T to establish an efficient and *legally mandated* protocol, Qwest has brought a "cross-complaint" indicating that AT&T's "actions" have put Qwest's customers out of service. The circumstances leading to this "cross-

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<sup>2</sup> If the Commission desires to hear this matter on an emergency basis, AT&T is prepared to file its written testimony within fifteen days of the Commission's order. It would also propose that this matter be completely litigated within a ninety-day timeframe as both parties consider this matter one which warrants expedited consideration.

complaint” evidence Qwest’s efforts to bring forward sham issues of fact in a last ditch effort to continue its virtual monopoly on providing MDU telecommunications services.

First, the allegations in the cross-complaint of customer disruption have never been brought to the attention of AT&T until presented in Qwest’s “cross-complaint,” even though AT&T has been accessing the NID/MPOE terminal utilizing the same or similar legally mandated protocols for at least a year.

Second, Qwest certainly has an ulterior motive to bring forward this “cross-complaint.” The relief requested in Qwest’s “cross-complaint” would allow Qwest to be the only provider of telephone services in MDU settings, a result extremely favorable to Qwest’s marketing and financial goals.

Third, Qwest’s “cross-complaint” is remarkably thin in its detail. It attaches a “declaration” of a Qwest employee attesting to his suspicions that AT&T is responsible for certain service outages. Qwest proffers no direct evidence that AT&T actually caused those outages by its actions. Furthermore, Qwest fails to disclose that it often experiences service outages as a result of its own actions. Certainly, any service disruption that AT&T is alleged to have caused should be viewed in light of Qwest’s service outage record in its entirety.

For these reasons, this Commission should afford little weight to Qwest’s employee declaration and should deny Qwest’s request for emergency relief. In the alternative, before this Commission decides to contemplate Qwest’s petition for emergency relief, an evidentiary hearing should be commenced by the Commission in which the issue of Qwest outages will be explored in its proper prospective, which will

assist the Commission in weighing the merits of Qwest's "cross-complaint" against relevant legal and public policy mandates.

#### IV. CONCLUSION

For the foregoing reasons, AT&T requests that this Commission deny Qwest's request for emergency relief and permanently enjoin Qwest from padlocking its NIDs/MPOE terminals pursuant to RCW 80.36.140, RCW 80.36.260 and WAC 480-120-016. This is a portion of the relief that AT&T seeks in its Complaint and Request for Expedited Treatment. If the Commission will not grant such relief to AT&T, AT&T requests this Commission to commence an evidentiary hearing before even contemplating Qwest's relief.

In the alternative, if this Commission believes that initiating an emergency adjudicative proceeding is warranted, this Commission should hear the interrelated claims found in AT&T's Complaint and Demand for Expedited Treatment in a consolidated, expedited proceeding.

RESPECTFULLY submitted this 10<sup>th</sup> day of January 2001.

AT&T COMMUNICATIONS OF  
THE PACIFIC NORTHWEST, INC.

By: \_\_\_\_\_  
Mary B. Tribby  
Steven H. Weigler  
1875 Lawrence Street  
Suite 1500  
Denver, Colorado 80202  
303-298-6957