

**BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation Into )  
U S WEST Communications, Inc.'s ) Docket No. UT-003022  
Compliance With Section 271 of the )  
Telecommunications Act of 1996 )

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In the Matter of U S WEST Communications, ) Docket No. UT-003040  
Inc.'s Statement of Generally Available )  
Terms Pursuant to Section 252(f) of the )  
Telecommunications Act of 1996 )

**SURREBUTTAL AFFIDAVIT OF DIANE F. ROTH**

**ON BEHALF OF AT&T**

**REGARDING PUBLIC INTEREST**

**May 8, 2002**

1 **I. INTRODUCTION AND QUALIFICATIONS**

2 My name is Diane F. Roth. I am employed by AT&T as Assistant Vice President  
3 in the Law and Government Affairs Department. My business address is 1875 Lawrence  
4 Street Denver, Colorado 80202. I am a regulatory and legislative advocate for AT&T in  
5 Colorado. I have previously filed an affidavit and supplemental affidavit in these  
6 proceedings, which further details my background and experience.

7 **II. PURPOSE OF SURREBUTTAL AFFIDAVIT**

8 The purpose of my surrebuttal affidavit is to respond to the May 10, 2002  
9 Supplemental Rebuttal Affidavit of David L. Teitzel on Public Interest Issues.

10 Mr. Teitzel is incorrect. There are indeed unusual circumstances that would make  
11 Qwest's entry into the long distance market in Washington contrary to the public  
12 interest.<sup>1</sup> The unusual circumstances that I recommend this Commission recognize are  
13 the past and on-going violations of Section 271 as well as the numerous and on-going  
14 examples of anti-competitive behavior that are documented in AT&T's initial affidavit  
15 filed by Mary Jane Rasher on June 7, 2001 (which I adopted via an affidavit filed on July  
16 6, 2001) and my Supplemental Affidavit filed on April 19, 2002.

17 Mr. Teitzel's approach in this supplemental case is very inconsistent. On one  
18 hand he asserts that this Commission should *not* consider anti-competitive behavior and  
19 occurrences that are the subject of federal or state investigations<sup>2</sup> (in this state or other  
20 states) and instead, consider them irrelevant to this Public Interest phase of the 271  
21 proceeding. Specifically, he takes issue with my discussions of the federally filed

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<sup>1</sup> Supplemental Rebuttal Affidavit of David L. Teitzel, page 3, lines 8-10.

<sup>2</sup> Mr. Teitzel does not attempt to rebut any aspect about the Minnesota investigation in "Secret Interconnect Agreements" that I discuss in my supplemental affidavit.

1 complaints of Touch America against Qwest, the AT&T complaint in Minnesota on  
2 testing of the Unbundled Network Element-Platform (UNE-P), the complaint filed by  
3 AT&T here in Washington against Qwest pursuant to Local Service Freezes Complaint,  
4 and Qwest's disparaging internal e-mail concerning Covad's bankruptcy. On the other  
5 hand, Mr. Teitzel makes numerous references to the orders from other jurisdictions,  
6 mostly that of the facilitator in the multi-state 271 proceeding as well as to the initial  
7 order on public interest of the Colorado Hearing Commissioner and urges this  
8 Commission to give these orders consideration and weight. In other words, Qwest  
9 argues to pay attention to selected orders in other jurisdictions when it believes it helps  
10 their case, but ignore relevant information from other proceedings or jurisdictions when it  
11 may be harmful to their case.

12 **III. SGAT LANGUAGE ON COMPREHENSIVE TESTING**

13 Mr. Teitzel's Supplemental Rebuttal Affidavit is inaccurate concerning the history  
14 and status of SGAT language in SGAT § 12.2.9.8. The complete story to date follows,  
15 but the bottom line is two-fold. First, Qwest agreed to eliminate § 12.2.9.8 in the  
16 Washington SGAT. Second, negotiations on comprehensive testing language for the  
17 SGAT in Arizona is on-going and remains unresolved. .

18 In the Multi-State UNE workshops, John Antonuk, the facilitator, came up with  
19 some language on comprehensive testing, after Qwest rejected AT&T's language  
20 proposals and the matter went into dispute. Qwest incorporated the Antonuk language  
21 into Section 12 of the Washington SGAT without discussing it in the Washington  
22 General Terms and Conditions workshops where Section 12 was considered. The  
23 Antonuk language that Qwest incorporated into the Washington SGAT was as follows:

1  
2 12.2.9.8 In addition to the testing set forth in other sections of  
3 Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations  
4 for comprehensive production test procedures. In the event that agreement  
5 is not reached, CLEC shall be entitled to employ, at its choice, the dispute  
6 resolution procedures of this agreement or expedited resolution through  
7 request to the state Commission to resolve any differences. In such cases,  
8 CLEC shall be entitled to testing that is *reasonably necessary to*  
9 *accommodate identified business plans or operations needs* counting for  
10 any other testing relevant to those plans or needs. As part of the resolution  
11 of such dispute, there shall be considered the issue of assigning  
12 responsibility for *the costs of such testing*. Absent a finding that the test  
13 scope and activities address issues of *common interest to the CLEC*  
14 *community*, the cost shall be assigned to the CLEC requesting the test  
15 procedures.<sup>3</sup>  
16

17 Among other things, AT&T objected to the Antonuk language because it required CLECs  
18 to justify the need for testing, by revealing their marketing and operations plans to Qwest.  
19 *See*, the first italicized language set. In addition, the language attempted to automatically  
20 allocate unspecified costs using language that was likely to create dispute. *See*, second  
21 italicized language set. As a consequence, AT&T offered the following counterproposal  
22 to Qwest on February 4, 2002:

23  
24 12.2.9.8 In addition to the testing set forth in other sections of  
25 Section 12.2.9, upon request by CLEC, Qwest shall enter into negotiations  
26 for comprehensive production test procedures. In the event that agreement  
27 is not reached within 60 days after the first request is made, CLEC shall be  
28 entitled to employ, at its choice, the dispute resolution procedures of this  
29 Agreement or expedited resolution through request to the state  
30 Commission to resolve any differences. ~~In such cases, CLEC shall be~~  
31 ~~entitled to testing that is reasonably necessary to accommodate identified~~  
32 ~~business plans or operations needs, accounting for any other testing~~  
33 ~~relevant to those plans or needs.~~ Generally, each party will bear its own  
34 costs associated with testing. However, as part of the resolution of such  
35 dispute, there shall be considered the issue of assigning responsibility for  
36 the costs of such testing if the issue of cost is raised by one of the parties  
37 and only if the costs of such testing are extraordinary to what would be

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<sup>3</sup> Language taken from Qwest's 4/5/02 Washington SGAT. In the Washington SGAT the language is stricken through with a footnote notation stating "This change reflects post-workshop consensus language agreed upon by Qwest, WorldCom and AT&T." See Exhibit A.

1 incurred in a production environment. If it can be demonstrated that  
2 Absent a finding that the test scope and activities do not address issues of  
3 common interest to the CLEC community, the costs of testing shall be  
4 assigned to the CLEC requesting the test procedures, but only to the extent  
5 that such costs exceed the costs Qwest would otherwise incur  
6 administering CLEC's pre-order, order, billing, maintenance and repair  
7 activities in the production (non-test) environment. In order to recover  
8 such costs from CLEC, as part of the resolution of the dispute Qwest shall  
9 provide detailed support for all such costs, including a clear explanation of  
10 why such costs will be incurred and would not be incurred as part of a  
11 normal production environment. As part of the resolution of the dispute,  
12 such cost recovery must be established as a maximum amount for which  
13 CLEC will be responsible in order to quantify the potential liability before  
14 commencing testing.

15  
16 Qwest responded by saying that it would be preferable simply to delete the section on this  
17 issue, and Qwest did so (see footnote 1). Nevertheless, at the urging of the Arizona  
18 Commission Staff, AT&T and Qwest are still negotiating language on this topic in  
19 Arizona. In the Arizona proceeding, Qwest provided AT&T with a mark-up of AT&T's  
20 original proposal on comprehensive testing. AT&T provided Qwest with a  
21 counterproposal. See Exhibit B, attached hereto. As of May 8, 2002, AT&T and the  
22 Arizona Commission Staff are awaiting Qwest's response to that counterproposal.  
23 Therefore, I urge this Commission to recognize that the characterization provided in Mr.  
24 Teitzel's supplemental rebuttal affidavit is incorrect and that my affidavit should be relied  
25 upon on this topic.

#### 26 **IV. CONCLUSION**

27 I recommend this Commission concur with the information filed in my affidavit  
28 in these proceedings and conclude that it would not be in the public interest for Qwest to  
29 enter the interLATA long distance market.

30