

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In Re Application of U S WEST, INC.	)	
and QWEST COMMUNICATIONS	)	Docket No. UT-991358
INTERNATIONAL, INC.	)	
for an Order Disclaiming Jurisdiction or,	)	AT&T OBJECTION TO ENTRY OF
in the Alternative, Approving the	)	CONFIDENTIAL AGREEMENT
U S WEST, INC. – QWEST	)	INTO THE RECORD AND TO
COMMUNICATIONS	)	COMMISSION RETENTION
<u>INTERNATIONAL INC. Merger</u>	)	

Pursuant to the Commission’s Seventh Supplemental Order Granting Motion to Issue Bench Requests and Revising Procedural Schedule (“Seventh Supplemental Order”), AT&T Communications of the Pacific Northwest, Inc. (“AT&T”), objects to entry of the highly confidential Agreement Between AT&T, U S WEST and Qwest (“AT&T Agreement”) into the record and to the Commission’s or its staff’s retention of that document.

**OBJECTION**

1. The AT&T Agreement resolves a private business dispute between AT&T, U S WEST, and Qwest (“Parties”) that does not arise from, or in any way relate to, the merger between U S WEST and Qwest. In consideration for the negotiated resolution of this dispute, AT&T has agreed to withdraw its participation in state commission review of the merger, including this proceeding. Unlike the Rhythms Links and Covad agreements that the Commission has reviewed, *none* of the issues resolved in the AT&T Agreement are issues under consideration in this proceeding. *See* Seventh Supp. Order at 3, paragraph 10. Nor is the AT&T Agreement in any way dependent on the outcome of the Commission’s review or the closure of the merger. The terms and conditions in the AT&T Agreement thus bear no direct relationship to

the public interest determination that the Commission must make in this case. *See id.* at 4, paragraph 11.

2. Not only do the terms and conditions of the AT&T Agreement not directly relate to the Commission's public interest determination, but disclosure of those terms and conditions would cause irreparable harm to the Parties to that Agreement. The AT&T Agreement reflects the privately negotiated resolution of a business dispute between the Parties. Disclosure of this or other agreements resolving such disputes would reveal competitively sensitive information about how the Parties conduct their businesses, serve their customers, and reach compromise on disputed intercompany issues. Such information is quintessentially confidential and should not be disclosed in this or any other proceeding without compelling reasons for disclosure.

3. The Commission's use of the AT&T Agreement will also have a significant impact beyond this docket on the extent to which parties subject to Commission oversight will be willing to negotiate a resolution to their private disputes in the future. Confidentiality is often a critical aspect of settlement agreements in general and negotiated intercompany agreements in particular. As long as such confidentiality is not used to cloak unlawful behavior, parties should be able to compromise their respective positions on disputed issues without fear that such compromise (or their willingness to compromise) will be used against them in other contexts. The Commission's refusal to give effect to such confidentiality – particularly when the terms and conditions do not relate to any issue pending Commission resolution – would strongly discourage future negotiated agreements, resulting in increased litigation and negating the Commission's consistent efforts to foster settlement.

4. The Commission, therefore, should not admit the AT&T Agreement into the

record or even retain a copy of that document in light of the harm to the Parties and the public interest that would result from such action without any corresponding benefit to the Commission's review in this proceeding. Commission staff nevertheless asserts that "it is essential that the Commission have access to the agreement as [the Commission] weighs the issues presented by the merger application." *See* Seventh Supp. Order at 3, paragraph 8 (quoting staff comments). The Commission's only arguable need for such access, however, is to assure itself that the Parties have accurately represented that the document, in fact, does not resolve or even address disputed issues in this proceeding and thus has no bearing on the Commission's public interest determination. Having satisfied itself of the accuracy of the Parties' representations, the Commission should honor the confidentiality of their agreement. If staff wants to make use of the fact that AT&T agreed to withdraw from this proceeding based on a confidential agreement with the Applicants on unrelated grounds, staff may do so without referring to any of the specific provisions of the AT&T Agreement. Indeed, the only possible uses of the substance of the AT&T Agreement in the briefing in this case would be to raise new issues not pertinent to the Commission's public interest determination, which would be improper and should not be permitted by the Commission.

5. Accordingly, the Parties are providing copies of the AT&T Agreement only to the Commission for its *in camera* review, as required by the Seventh Supplemental Order and designated as highly confidential pursuant to the terms of the Protective Order in this docket. The Parties will comply with the Commission's orders, but they urge the Commission not to admit the document into the record and to require the return of all copies of the AT&T Agreement to the Parties.

## REQUEST FOR RELIEF

6. For the foregoing reasons, AT&T requests the following relief:
  - a. That the Commission consider the submission of the AT&T Agreement in response to Bench Request No. 2 as a submission for *in camera* review by the Commission to determine whether the terms and conditions of the AT&T Agreement are relevant to any of the issues presented for Commission resolution in this docket;
  - b. That the Commission, based on its *in camera* review, determine that
    - (i) the terms and conditions of the AT&T Agreement are not relevant to the issues presented for Commission resolution in this docket; and that
    - (ii) retention by the Commission or further disclosure of the AT&T Agreement would cause severe competitive harm to the Parties to that agreement and would substantially discourage future settlements of private disputes between companies subject to Commission oversight; and
  - c. That the Commission decline to make the AT&T Agreement an exhibit or otherwise enter it into the record in this docket and that the Commission return to the Parties all copies of the AT&T Agreement that have been provided to the Commission and order Commission staff to return to the Parties all copies of the AT&T Agreement in staff's possession.

Respectfully submitted this 5th day of May 2000.

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