BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T Communications of the Pacific Northwest, Inc.,	)	DOCKET NO. UT-003120
Complainant,	)	QWEST'S RESPONSE TO AT&T'S JANUARY 19, 2001 ANSWER
Vs.	)	
Qwest Corporation,	)	
Respondent.	)	

Qwest Corporation ("Qwest") hereby files a brief response to AT&T's January 19, 2001 "Answer". Qwest does not believe that such an "answer" is authorized under Commission rules and it should therefore be stricken or disregarded. Furthermore, contrary to the allegations contained in that document, it is AT&T who has improperly attempted to "gain undue tactical advantage in this proceeding", not Qwest.

First, it is clear that Qwest complied with the Commission's rules regarding the filing of a reply. Qwest asked for permission to file a reply as required by WAC 480-09-425(3)(b), and attached its proposed reply to that request. The granting of leave to file such a reply is discretionary with the Commission. However, Qwest, as the moving party with regard to the

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motion, and as the party with the burden of proof with regard to the cross-complaint itself, does have the right to have the last word on these issues. Thus, there is no undue or unfair tactical advantage to Qwest by being permitted to file a responsive pleading to AT&T's answer.

Further, while it is generally correct that a "motion" may be answered, AT&T's answer here is improper. Qwest's "motion" was simply for leave to file a reply. AT&T could arguably file an answer to that motion, but it could properly only address the merits of whether a reply should be permitted. AT&T here seeks far more than to simply answer the motion, AT&T addresses the reply itself. This is improper, as there is never a responsive pleading authorized to a reply.

Finally, the claim that AT&T makes in its January 19 Answer is flatly disingenuous. AT&T claims that its January 11 response addressed only Qwest's *motion* to amend its answer to include a cross-complaint, not the cross-complaint itself. This argument is not borne out by either the substance of the January 11 response, the procedural history in this case, or common sense.

First, AT&T's January 11 response makes it abundantly clear that AT&T is addressing not only the question of whether Qwest should be permitted to amend its answer, but also the substance of the cross-complaint. Indeed AT&T virtually assumes that the *motion to amend* will be granted, and never even directly addresses that question. WAC 480-09-425(5) governs amendments to pleadings, and AT&T does not so much as even cite that provision, much less discuss it. The entire pleading addresses the merits of either Qwest's request for emergency relief, or AT&T's request to access the building terminals. The following examples from AT&T's response indicate clearly that this response addressed the *merits* of the cross-complaint, contrary to AT&T's current assertions. At page 1 of the response, AT&T states "AT&T denies that Qwest's

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Cross-Complaint meets the requirements for obtaining emergency relief" and goes on to state that "AT&T would request that the [] Commission deny Qwest's request for emergency relief." AT&T addresses the merits of the cross-complaint itself at pages 3 through 6. Finally, AT&T concludes by asking the Commission, at page 7, to "deny Qwest's request for emergency relief". AT&T cannot now credibly come before the Commission and claim that it "did not intend to file answer to a cross-complaint" (January 19 answer at page 2).

Additionally, Qwest believes that the parties should have reasonably understood that AT&T's January 11 pleading should address both Qwest's motion to amend and the substance of the cross-complaint. There are several reasons for this. First, the standard for being permitted to amend a pleading is not stringent or detailed, and is discretionary with the Commission. WAC 480-09-425(5) states that the Commission may allow amendments to pleadings "at any time upon such terms as may be lawful and just". Thus, it strains credulity to suggest that AT&T would need 19 days (from December 20 when the motion was filed until January 8, the date AT&T requested as a due date) in order to file its answer if indeed it only intended to address the motion and not the merits of the cross-complaint as well.

Further, Qwest believes that the parties understood, during the off-record discussion during the prehearing conference with regard to scheduling, that AT&T would be addressing more than simply the procedural aspects of whether the motion to amend should be granted. The prehearing conference order identifies AT&T's required pleading as a "response to Qwest's motion to amend". However, the subsequent notice extending the deadline accurately describes what AT&T was to file, and what AT&T in fact did file, an "Answer to Qwest's Cross Complaint". (See, January 9, 2001 Notice of Revised Procedural Schedule).

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AT&T should not be permitted to now come before the Commission and deny statements that it made in its January 11 response. AT&T did intend to respond to the cross-complaint, and clearly did so. Now that the infirmities of its response have been pointed out, AT&T is attempting to change the reality of its earlier filing, to gain another opportunity to file an answer, and to further delay the proceedings, all the while continuing to damage Qwest's property and otherwise engage in unlawful behavior.

Respectfully submitted this 25th day of January, 2001.

Qwest Corporation

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