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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Complaint and Request for )	
Expedited Treatment of AT&T Communications )	No. UT-991292
of the Pacific Northwest, Inc. Against U S WEST)	
Communications, Inc. Regarding Provisioning of )	U S WEST'S ANSWER TO AT&T'S
Access Services )	MOTION TO COMPEL
_____ )	

U S WEST Communications, Inc., (U S WEST) hereby files its response to AT&T's motion to compel responses to discovery requests. This answer is filed pursuant to the provisions of WAC 480-09-480(7) and is timely filed within five (5) days of service of the motion.

**INTRODUCTION**

U S WEST believes it has properly responded or objected to the data requests served by AT&T in this matter, as well as the requests for admission. To the extent that U S WEST has been unable to provide responses to date, U S WEST is continuing to work on those responses and has advised AT&T that responses will be forthcoming as they are prepared. There is absolutely no basis for sanctions or an order compelling U S WEST to respond to the data requests that it is already working on preparing responses to. To the extent that AT&T wishes to take issue with any of U S WEST's objections to particular data requests, AT&T has failed to properly raise those

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issues in its very general motion to compel and AT&T should be required to identify with specificity which of the data requests it seeks to compel responses to, which would permit U S WEST to argue those issues specifically.

**I. ARGUMENT**

AT&T makes much of the fact that it provided answers or objections to U S WEST's data requests within the time required, suggesting that U S WEST's inability to do the same is intentional and done with the purpose of delaying this proceeding. This is simply untrue, and there are many reasons why AT&T could timely respond while U S WEST has needed additional time. Not the least of these is that U S WEST's requests were reasonably tailored to the scope of the complaint, while AT&T sought to discover virtually every document regarding access services that U S WEST has received or created since 1995. The requests also sought to discover information which has nothing to do with access services or the allegations in the complaint.

Furthermore, AT&T filed this complaint on August 18, 1999. At that time, one would expect that AT&T had sufficient facts upon which to base its complaint and had months and years within which to gather that data. In fact, AT&T alleges service quality issues dating back to the 1995 or 1996 time frame, indicating that AT&T has indeed been busily gathering data for four or five years in preparation for filing this complaint. Thus, it should come as no surprise that AT&T was generally able to answer U S WEST's data requests in the time allowed.

U S WEST, on the other hand, had absolutely no notice that AT&T was planning on filing this complaint and in fact had no ability to prepare for the discovery requests, including 90 data requests and 26 requests for admission, which were served on September 24, 1999 and received by U S WEST on September 27, 1999. Upon receipt of those data requests, U S WEST began

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2 preparing both objections and responses. What was immediately clear upon review of the data  
3 requests was that many of the requests were highly objectionable, either because they were vague,  
4 overbroad, requested information that was not relevant to this proceeding, required undue  
5 burdensome amounts of production, or all of the above. U S WEST in good faith interposed those  
6 objections to AT&T's data requests. With regard to many of the other requests, U S WEST has  
7 provided or is in the process of providing responses to AT&T. Again, as noted above, U S WEST  
8 had no ability to foresee the type of data that would be requested by AT&T and thus has had a  
9 difficult time in compiling data, reviewing it, and serving voluminous amounts of data on AT&T.  
10 Nevertheless, U S WEST has made a diligent and concerted effort to be forthcoming with the data  
11 that AT&T has requested in this docket. Although AT&T has complained in its motion that  
12 U S WEST has "dribbled in responses" to AT&T's discovery requests, U S WEST prefers to view  
13 the process as one in which responses were provided as they became available.

14 AT&T also complains that counsel for U S WEST has not kept counsel for AT&T apprised  
15 of the status of the discovery requests. This is not accurate. U S WEST has attempted to keep  
16 AT&T apprised of the status of these data request responses. U S WEST has written to counsel  
17 for AT&T on at least three occasions and has telephoned counsel for AT&T at least twice.  
18 Unfortunately, although U S WEST has made every effort to accurately predict when its responses  
19 will be able to be served, U S WEST, and counsel for U S WEST, have been perhaps overly  
20 optimistic about when the responses were to be filed. It is correct that not all of the data request  
21 responses have been provided to AT&T to date, but U S WEST does expect that all of the  
22 production will be complete by the end of the week.

23 U S WEST was concerned, and voiced the concern at the prehearing conference, that the

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schedule in this docket was overly optimistic. That was even prior to U S WEST being aware of the volume of data requests that AT&T was planning on serving. In fact, U S WEST did discuss with the Administrative Law Judge and counsel for AT&T during the prehearing conference whether or not it would be appropriate to establish a timeline of three calendar weeks for data request responses as opposed to the usual two. However, it was decided that the two-week deadline should be retained, with every effort made to comply with it and an understanding that not all responses might be able to be provided during that timeframe.

AT&T complains that it would have requested a prehearing conference on October 14 if it had known how late U S WEST's data requests were going to be. As noted above, U S WEST has made a good faith effort to estimate when its responses would be served and some of those responses will in fact be later than originally estimated. However, U S WEST telephoned counsel for AT&T on the afternoon of October 12, 1999 in an attempt to discuss these issues and allow AT&T to notify the Administrative Law Judge on that date that the prehearing conference would be necessary. Counsel for U S WEST was advised that counsel for AT&T was out of the office for Tuesday afternoon and that conversation thus did not take place. However, U S WEST in no way sought to mislead AT&T into not requesting a prehearing conference and U S WEST stands ready to appear at a prehearing conference or discovery conference as the Administrative Law Judge should require.

AT&T complains that time is of the essence in this docket and that its testimony is due in a week. U S WEST is sympathetic with the time constraints placed upon AT&T in this matter and reiterates its prior warnings that the schedule did not in fact allow enough time. AT&T's estimate that it would be able to file testimony on October 25 was obviously overly optimistic, and

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U S WEST reiterates that the schedule did not contemplate that there might be disputes or issues between the parties when the timelines were established. U S WEST denies that it has made any deliberate attempt to manipulate the litigation process to halt AT&T's attempts to "discover the truth" or to delay this proceeding.

AT&T does not specifically identify which requests it believes were improperly objected to or not fully answered. AT&T does set forth six bases upon which U S WEST has objected to the data requests, characterizing them as some of the "more ridiculous objections made by U S WEST." U S WEST will address each of these objections in turn:

**AT&T's Requests Are Vague And Ambiguous**

It is correct that U S WEST has interposed an objection to many of the requests on the bases that certain of the terms used in the context of the questions make the questions or requests vague and ambiguous. While the terms selected by AT&T for its pleading, such as "location," "transaction," "representations," etc., may have meanings that U S WEST understands when U S WEST uses the term, when U S WEST has objected to data requests on the bases that they are vague and ambiguous it is because the terms used by AT&T in the context of the question are not at all clear. For example, U S WEST objected to Data Request No. 23 on the basis that in the context of the question the "location" where U S WEST has held orders is vague, as well as on the basis that the term "AAV" as used in that request is unclear, and because the information requested appears, as far as U S WEST can tell, to be information that AT&T already has.

It should be noted that U S WEST in no case relies on a vague and ambiguous objection as its only objection to a particular request. If U S WEST had merely found the questions to be vague or ambiguous, U S WEST would have placed a clarifying telephone call to opposing counsel.

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However, in each instance where the requests were objectionable because they were vague and ambiguous, they were objectionable for many other reasons as well and U S WEST thus simply interposed the vague and ambiguous objection as one of the many bases upon which U S WEST declined to answer the particular question.

**AT&T's Requests Are Unduly Burdensome**

U S WEST has stated in response to many of the data requests that gathering the data would be unduly burdensome. In some instances, U S WEST has explained exactly what would be required to gather the data. For example, in response to Data Request No. 83, U S WEST has explained that responding to AT&T's request to produce all documents that track when U S WEST receives ASRs from AT&T for Washington from 1996 to the present is unduly burdensome because U S WEST has received 20,834 access service requests from AT&T in Washington since January 1, 1996. U S WEST has explained that producing a report containing all of the ASRs would be unduly burdensome and would not contain relevant information.

U S WEST adheres to the national standards regarding access service requests. These standards require U S WEST to send AT&T an acknowledgement for each ASR receipt and the standards to find what information must be contained in that acknowledgement. Thus, the information AT&T seeks is fully available to AT&T, as well as being burdensome to U S WEST to produce.

U S WEST does not believe that these are "ridiculous" objections, but rather believes they are well-founded objections to requests by AT&T which are clearly overly broad and unduly burdensome fishing expeditions for data.

**AT&T's Requests Are Not Reasonably Limited In Time**

AT&T has noted that U S WEST has, in certain instances, objected that the data requested

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2 was not reasonably limited in time. It is correct that U S WEST has also interposed this objection  
3 as a basis for not answering a particular data request or for providing information that is more  
4 limited in time than the original scope of the request. Again, U S WEST has never relied on this  
5 objection as the sole basis for declining to answer a question. U S WEST does not believe that  
6 data from the 1995 or 1996 timeframe is relevant to AT&T's complaint and AT&T is certainly  
7 free to argue that issue on a motion to compel if it chooses to do so. However, U S WEST notes  
8 that since the 1995 timeframe, U S WEST has filed a rate case, Docket No. UT-970766, to which  
9 AT&T was a party and in which these issues could potentially have been addressed for the 1995  
10 and 1996 time period. Additionally, AT&T filed a substantially similar complaint in two states,  
11 Minnesota and Arizona, in 1997 but did not do so in Washington. U S WEST does not believe  
12 that AT&T's complaint properly raises issues that reach back to the 1995 or 1996 time period.

### 13 **Confidential/Proprietary Information**

14 U S WEST has noted in conjunction with one or more other objections, that the  
15 information requested is confidential and proprietary and that disclosure of that information would  
16 result in a private loss to U S WEST, including an unfair competitive disadvantage. U S WEST  
17 believes that these are proper objections to raise in conjunction with its other objections stated in  
18 response to the same data request, i.e., that the information sought is not relevant to the  
19 proceeding. If the information sought is not relevant, U S WEST is not bound to disclose it and  
20 even a protective order does not prevent the harm that U S WEST would suffer by being forced to  
21 disclose competitively sensitive information that has no bearing on the case.

### 22 **AT&T's Requests Are Overly Broad**

23 AT&T complains here that U S WEST has objected to the requests because they are overly

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broad, because they are not limited to certain services, because they are not limited to AT&T only as a customer, because they are not limited to certain timeframes, etc. AT&T is correct that U S WEST has interposed all of these objections in regard to various of the data requests. AT&T next claims that U S WEST should have answered the questions for those services, customers, or timeframes that U S WEST believes are relevant. This is absolutely absurd. It is not U S WEST's job to rewrite AT&T's data requests so that they are properly framed or limited for this case. It is U S WEST's obligation to either answer the question asked or interpose a legitimate objection. That is exactly what U S WEST has done and U S WEST has not and will not rewrite AT&T's data requests so that they are more precisely framed, so that they are more properly directed to the issues in this case, or so that they are not objectionable. That is AT&T's job and AT&T could certainly have drafted appropriately limited questions when it served its data requests in September.

**AT&T's Requests Seek Litigation Strategy**

AT&T complains that U S WEST has interposed a single objection to Data Request No. 36 on the basis that it calls for U S WEST's litigation strategy. AT&T has characterized this objection as "ridiculous." AT&T is obviously not aware that this Commission has held on more than one occasion that data requests which seek to discover a party's litigation strategy are simply not proper data requests. For example, in the Ninth Supplemental Order in Docket No. UT-980948, dated April 21, 1999, the Administrative Law Judge held that certain of U S WEST's data requests asked for documents that could be closely related to case strategy, an issue that the Commission in the past has determined to be improper for inquiry on discovery. As such, U S WEST believes that its objection to Data Request No. 36 on the basis that the request calls for litigation strategy is



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an entirely appropriate objection.

U S WEST believes its objections are anything but ridiculous, and are in fact U S WEST's legitimate and only defense to AT&T's broad discovery requests which would, taken as a whole, require U S WEST to produce every single document it has either ever received or created with regard to access services from 1995 to the present. Additionally, AT&T's requests are so broad that they would require U S WEST to produce data which is proprietary to other carriers, such as access information related to the access services U S WEST provisions to MCI, Sprint, and other interexchange carriers. Additionally, AT&T would seek to discover all of U S WEST's retail information, as well as all of U S WEST's methodologies for forecasting, U S WEST's business plans, U S WEST's budgets, expenses and revenues, and any other past, present or future business analyses that U S WEST has conducted. Essentially, AT&T has asked for the keys to U S WEST's business in these data requests, and these data requests are thus wholly inappropriate and objectionable as set forth in U S WEST's data responses.

U S WEST cannot respond specifically to any particular data requests as AT&T has declined in its motion to compel to identify any particular requests to which it seeks responses. Thus, U S WEST will stand on the objections it has set forth in the data requests as well as the responses U S WEST has provided. U S WEST believes that it is important to note that it has responded to each and every one of the 26 requests for admission and has provided responses and/or objections to 73 of the 90 data requests AT&T served. The remaining 17 should be complete this week. The data already provided includes over two boxes of attachments, as well as numerous individual smaller documents, and narrative responses to specific requests.

**II. RELIEF REQUESTED**

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AT&T suggests that U S WEST should be barred from participating further in this docket and AT&T should be awarded judgment on the pleadings. AT&T further suggests that sanctions are appropriate and that it be awarded attorneys fees and costs for the time taken to follow up with regard to when responses would be received and the time necessary to draft the motion. AT&T's request for relief is absurd. It has no basis in fact or law and should be denied. AT&T knows full well that objections and motions to compel are part of their legitimate discovery process. For example, in Docket No. UT-990022, AT&T refused to answer virtually every single one of U S WEST's data requests, and U S WEST brought a motion to compel. In that matter, AT&T was required to respond to some of the requests, and even though the schedule in that matter originally contemplated an order in July, the matter is still pending because of extensions of time necessitated by the discovery dispute, as well as other issues.

If AT&T needs additional time to file its testimony, then AT&T should be granted that time. However, no sanctions or shortened time for response should be imposed on U S WEST under the circumstances presented herein.

DATED this 20th day of October, 1999.

U S WEST Communications, Inc.

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Lisa A. Anderl, WSBA No. 13236