

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC., et  
al,

Respondents.

DOCKET NO. UT-033011

PUBLIC COUNSEL'S  
RESPONSE TO QWEST'S  
MOTION TO STRIKE

**I. INTRODUCTION**

The Public Counsel Section of the Office of the Attorney General of Washington (“Public Counsel”) hereby submits its response to Qwest’s Motion to Strike Testimony of Stephen C. Gray and Richard A. Smith filed on September 16<sup>th</sup>, 2004. Public Counsel opposes the motion and requests that it be denied.

**II. ANALYSIS**

**A. Due Process is met by the procedural schedule in place.**

Qwest’s due process rights are not compromised by the filing of the testimony to which Qwest objects. Qwest has the opportunity pursuant to the Commission’s rules to conduct discovery, note depositions, or request the opportunity to provide testimony responsive to the testimony to which it objects. These alternatives are more appropriate remedies than exclusion of the testimony in this proceeding.

**B. The recently filed testimony is relevant to questions of fact now before the Commission.**

The testimonies of Mr. Gray and Mr. Smith appear to be directly relevant to issues in dispute before the Commission. As such, they should be admitted. Qwest also objects to Mr. Gray's reliance on alleged hearsay. *Qwest Motion at p. 14*. Hearsay has been admissible before the Commission and the Commission has granted such testimony the weight it believes appropriate. Alleged reliance on hearsay or double hearsay is an insufficient basis for striking testimony in a Commission proceeding.

**C. The procedural schedule has been modified several times and could be again.**

The schedule of this proceeding has been modified several times. Currently the evidentiary hearings are scheduled for January of 2005. Sufficient time remains for Qwest to conduct discovery on the testimonies to which it objects, conduct depositions if it desires, and request an opportunity to respond to the testimony if it so chooses.

**III. CONCLUSIONS**

For the foregoing reasons Public Counsel urges the Commission to reject Qwest's motion.

Respectfully submitted on this 21<sup>st</sup> day of September, 2004.

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