

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

AT&T CORPORATION and AT&T  
COMMUNICATIONS OF THE  
PACIFIC NORTHWEST, INC.,

Complainants,

vs.

QWEST CORPORATION,

Respondent.

Docket No. UT-041394

QWEST'S MOTION TO REVISE THE  
PROCEDURAL SCHEDULE; REQUESTING  
PREHEARING CONFERENCE

**I. INTRODUCTION**

- 1 Pursuant to WAC 480-07-385, Qwest Corporation ("Qwest") hereby moves the Commission to schedule a prehearing conference in order to discuss scheduling in this matter. Qwest asks that the schedule be revised as described herein to allow for prefiled testimony and hearings. Qwest believes that a hearing is required under RCW 80.04.110 and Chapter 80.54 RCW if the Commission is to grant AT&T any relief, and that either a hearing must be held, or the Complaint must be dismissed.
- 2 Qwest has asked counsel for the AT&T Complainants whether AT&T would agree to the rescheduling proposed in this motion. AT&T has not yet responded to that inquiry. In

addition, counsel for Staff has previously been advised that Qwest would be filing this motion. Qwest believes a prehearing conference should be convened to discuss scheduling.

## II. DISCUSSION

3 The existing schedule calls for the parties to file cross motions for summary determination on January 24, 2005, followed by answers on February 7 and oral argument on February 15, 2005. Qwest agreed to that schedule during the prehearing conference on October 14, 2004. At that time, Qwest believed that the case could reasonably be resolved on cross motions for summary determination and that there would be few, if any, disputed facts. Since that time, Qwest has come to believe otherwise and no longer consents to the matter being resolved without a hearing.

4 This complaint proceeding cannot be resolved without a hearing for at least two reasons, each of which independently supports the need for a hearing. First, the discovery process has disclosed that the parties do, in fact, disagree on material facts, thus making an evidentiary hearing necessary, and cross motions for summary determination pointless. Second, a hearing is required by the statutory provisions under which the complaint has been brought.

5 Qwest has learned through discovery that there are material facts in dispute or potentially in dispute that can only be resolved through hearing. Disputes on facts such as these should be tested in hearing and under cross-examination.

6 A few examples of facts that are or may be in dispute: whether Qwest's predecessor had actual knowledge of the true occupant of the conduit; how the contract rates were arrived at; whether AT&T Corp. is authorized to construct facilities in the right of way; and, the facts concerning how to perform a proper cost and pricing calculation pursuant to the applicable statutory standard.

7 Furthermore, while some cases may be decided by summary determination whether the parties consent to such a determination or not, there are certain types of cases where the Commission is statutorily obligated to have a hearing before granting relief to the complainant. This is one of those cases.

8 AT&T has brought this complaint under RCW 80.04.110 and Chapter 80.54 RCW, and has not claimed that it is entitled to relief under any other provisions of the law. Both statutory schemes provide that the Commission may grant relief only after hearing. Specifically, RCW 80.04.110(1) provides in relevant part as follows:

[W]hen two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, *the commission shall have power, after notice and hearing* as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state (emphasis added).

RCW 80.54.030 provides:

Whenever the commission shall find, *after hearing* had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made (emphasis added).

9 Thus, it seems clear that if the Commission is to grant relief under either of these statutes, it may do so only after hearing. Of course, Qwest believes that the Commission will ultimately find that no such relief is warranted. However, a full and fair determination of the case requires that AT&T present its evidence in a hearing, subject to cross-examination. In addition, while it may be appropriate to decide a case such as this on cross motions for summary determination if both parties so consent, it is clearly a violation of the applicable statutes to do so when the respondent does not consent to such a determination.

10 Finally, this schedule change will not prejudice AT&T. As the Complainant, AT&T is obligated to prove its case by a preponderance of the evidence at hearing, and cannot escape that burden by the filing of a summary motion. Thus, this schedule change places AT&T in the position it chose and accepted when it filed a formal complaint.<sup>1</sup>

11 Qwest proposes that the details regarding the timing of prefiled testimony and the dates of the hearings be discussed and decided at a prehearing conference and requests that such conference be scheduled as soon as possible given the impending deadlines under the current schedule.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of January, 2005.

QWEST

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<sup>1</sup> In addition, AT&T may still bring a motion for summary determination in accordance with WAC 480-07-380. Under that rule, if Qwest desired, it could also file a motion for summary determination with its answer. The Commission may deny AT&T's motion, or may carry the motion with the case and rule on it after hearing.