

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| AT&T CORP., AND AT&T     | ) | DOCKET NO. UT-041394                |
| COMMUNICATIONS OF THE    | ) |                                     |
| PACIFIC NORTHWEST, INC., | ) | ORDER NO. 04                        |
|                          | ) |                                     |
| Complainants,            | ) |                                     |
|                          | ) | PREHEARING CONFERENCE               |
| v.                       | ) | ORDER; ORDER SETTING                |
|                          | ) | SCHEDULE                            |
| QWEST CORPORATION,       | ) | (Procedural schedule set for filing |
|                          | ) | agreed facts (February 23, 2005);   |
| Respondent.              | ) | motion for Summary Determination    |
|                          | ) | (March 23, 2005); and responses)    |
| .....                    | ) |                                     |

**1 Proceeding:** Docket No. UT-041394 is a complaint by AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc. (collectively hereafter referred to as “AT&T”) against Qwest Corporation, alleging violations of law in transactions involving the lease of Qwest conduit space to AT&T.

**2 Conference:** The Commission convened a prehearing conference in this docket at Olympia, Washington on January 19, 2005, before Administrative Law Judge C. Robert Wallis.

**3 Appearances.** Complainants are represented by Gregory Kopta, attorney, Seattle, Washington, and Scott Thompson, attorney, Washington, D. C. Respondent Qwest is represented by Lisa Anderl, attorney, Seattle, Washington. Commission Staff is represented by Greg Trautman, Assistant Attorney General, Olympia, Washington.

4 **Purpose of the conference.** The parties agreed at the initial prehearing conference to a schedule providing for the development of a statement of agreed facts and cross motions for summary determination. Subsequently Qwest filed a revised answer, which was accepted, and moved for modification of the proposed procedural schedule to provide for an oral evidentiary hearing. On January 18, 2005, it also filed a motion to further amend its answer to the complaint. The purpose of the prehearing conference was to assess the procedural status of the proceeding and set a schedule for required procedural events.

5 **Motion to further amend the answer.** Qwest filed its second motion to amend its answer to the complaint on the day of the hearing.<sup>1</sup> Other parties may answer the motion if their answers are filed no later than Wednesday, January 26, 2005; parties may reply to the answer in pleadings filed no later than February 2, 2005. Because of the tight time frame, pleadings will be considered timely filed if they are received electronically at the Commission's records center no later than 4:00 p.m. of the day stated as the deadline, and the original and the required number of paper copies are received before 1 p.m. on the following business day.

6 **Qwest motion to amend the procedural schedule.** Qwest's motion asks that the procedural schedule be amended by omitting the development of a statement of agreed facts. It argues that an oral evidentiary hearing is required on the matter by statute<sup>2</sup> unless all parties waive the oral evidentiary hearing. It refuses to waive an oral evidentiary hearing, it says, and consequently it saw no value in working to develop an agreed statement of facts.

---

<sup>1</sup> A courtesy copy was directed to other parties and the Commission's records center the day before the hearing, but the paper filing and the necessary number of copies were not received until the day of the conference. Parties are requested to provide courtesy electronic mail copies of their pleadings to the presiding ALJ at the time they provide such copies to each other.

<sup>2</sup> Qwest cites RCW 80.04.110, which reads in part as follows: "\*\*\* upon such complaint . . . the Commission shall have power, *after notice and hearing* . . . to, by its order . . . correct the abuse complained of . . ." *Emphasis added.*

- 7 During discussions at the conference, Qwest agreed that a statement of agreed facts could prove to be beneficial in reducing the time and effort in a hearing if one is held. It agreed to cooperate with other parties in the development of a statement of agreed facts. AT&T will present a first draft of such a statement and will provide it to Qwest and Commission Staff no later than Wednesday, January 26, 2005. Parties will then exchange drafts, and will file a final statement of agreed facts no later than Wednesday, February 23, 2005.
- 8 **Motions for Summary Determination.** After a statement of agreed facts is determined, AT&T will decide whether those facts will support a motion for summary determination. It may file a motion for summary determination no later than March 23, 2005; other parties may answer the motion (and Qwest may file a counter motion for summary determination against AT&T) no later than April 20, 2005. Responses to the answer may be filed no later than May 18, 2005.
- 9 Qwest argued that because it refused to waive an oral evidentiary hearing, in light of the statutory requirement of a hearing, the Commission is not empowered to grant a motion for summary determination. We disagree.
- 10 Any party may present a motion for summary determination. In Commission practice, it would customarily be presented after the prefiling of evidence, taking it as true for purposes of the motion and construing it most favorably to the proponent of the facts. *WAC 480-07-380*. An agreed statement of facts may serve the same purpose. The parties discussed whether an agreed statement of facts would be sufficient to support motions for summary determination. We propose to add to the procedural schedule a prehearing conference shortly after the statement of agreed facts is filed, on a date to be later determined, to address this issue in light of the actual filing. The ultimate schedule must be sufficient to allow all parties adequate protections of their due process rights.

11 Schedule for an oral adjudicative hearing. The parties agreed that the scope of the hearing is not sufficiently defined to determine whether additional discovery will be necessary. They agreed that upon the decision on the Qwest motion to amend its answer, they should be in a better position to assess the necessary process and agree upon an appropriate schedule. At the request of any party or the ALJ, the parties will communicate informally or in a scheduling conference to resolve remaining scheduling issues.

12 **Schedule.** The following schedule identifies dates that are established in this order.

| <b>Procedural schedule established January 19, 2005</b> |                   |
|---|-------------------|
| <b>Docket No. UT-041394</b>                             |                   |
| <b>Motion to Compel (if any)</b>                        |                   |
| Motion to be filed                                      | Promptly          |
| Argument on the motion                                  | To be determined  |
| <b>Qwest's Second Motion to Amend Answer</b>            |                   |
| Answer  | January 26, 2005  |
| Reply, if any   | February 2, 2005  |
| <b>Statement of Agreed Facts</b>                        |                   |
| First draft due to other parties from AT&T              | January 26, 2005  |
| Completed statement due at the Commission               | February 23, 2005 |
| Prehearing Conference                                   | To be determined  |
| <b>Motion for Summary Determination</b>                 |                   |
| AT&T motion, if any                                     | March 23, 2005    |
| Answers and Qwest cross-motion, if any                  | April 20, 2005    |
| Replies to answers and answer to cross-motion           | May 18, 2005      |
| Oral argument, if needed                                | To be determined  |
| <b>Oral Evidentiary Hearing</b>                         |                   |
| Schedule for hearing, if needed                         | To be determined  |

13 The following previously -scheduled dates are cancelled:

| <b>Previously-scheduled dates that are cancelled in this order</b>            |                              |
|---|------------------------------|
| Cross motions for summary determination or briefs supporting proposed results | <del>January 24, 2005</del>  |
| Answers to cross-motions/briefs   | <del>February 7, 2005</del>  |
| Oral argument   | <del>February 15, 2005</del> |

Dated at Olympia, Washington, and effective this 21st day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

C. ROBERT WALLIS  
Administrative Law Judge

**NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**