Before the
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
Olympia, Washington

AT&T CORP., and AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., Complainants, vs. QWEST CORPORATION, Respondent.	)	Docket No. UT-041394 **COMPLAINANTS' OPPOSITION TO QWEST'S MOTION FOR LEAVE TO FILE A SECOND AMENDED ANSWER, ADDING CROSS-COMPLAINT**

AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc. (hereinafter "Complainants" or "AT&T"), through their attorneys and pursuant to WAC 480-07-405, submit this Opposition to Qwest Corporation's Motion For Leave To File A Seconded Amended Answer, Adding Cross-Complaint ("Second Motion") in the above-captioned matter.

I. INTRODUCTION

In its Second Motion, Qwest seeks to amend its Answer yet a second time to (1) retract Qwest's previous admission that its SGAT rates are just and reasonable rates, (2) allegedly retract its affirmative defense that the Commission lacks jurisdiction to adjudicate AT&T's Complaint, and (3) introduce a cross-complaint seeking to have conduit rate of $2.00 per foot per year. As demonstrated below, while the Commission's rules generally allow for amendment of answers, Qwest's Second Motion nonetheless should be denied, as its grant would prejudice

AT&T, causing undue delay and unfair surprise, and because there appears to be no good faith basis for Qwest's proposed retraction of its admission.

Paragraph 16 of AT&T's Complaint alleged that "[t]he conduit rate produced by the FCC's formula—and Qwest's current advertised SGAT rate—is a just and reasonable rate consistent with 47 U.S.C. § 224 and RCW 80.54.040." In both its Answer and its First Amended Answer, Qwest admitted the allegations of AT&T's paragraph 16 – in total. (Qwest Answer ¶ 30 ("Qwest admits the allegations in paragraph 16 of the Complaint")). AT&T's Complaint was filed nearly six months ago on August 4, 2004. In reliance on Qwest's admission, during the subsequent several months of discovery, AT&T did not seek any discovery of Qwest's costs and other data that would be necessary to calculate a just and reasonable conduit rental rate under 47 U.S.C. § 224 and RCW 80.54.040.

Nonetheless, on the eve of the due date for motions for summary disposition, Qwest moved the Commission to require an evidentiary hearing.[1] In support of that motion, Qwest alleged that there were issues of fact that precluded summary disposition, including, Qwest argued, the calculation of a reasonable rate. In its opposition to Qwest's motion for an evidentiary hearing, AT&T responded, in part, by rebutting Qwest's allegations of factual disputes, in particular, noting that no factual dispute existed because Qwest had admitted in its Answer that the SGAT rate was just and reasonable under 47 U.S.C. § 224 and RCW 80.54.040. In addition, AT&T noted that the Commission should first resolve the issue of jurisdiction raised by Qwest.[2]

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[1] Qwest's Motion To Revise the Procedural Schedule; Requesting Pre-Hearing Conference, filed January 5, 2005.

[2] AT&T Opposition Qwest's Motion To Revise the Procedural Schedule; Requesting Pre-Hearing Conference, p. 8.

Now, nine days after the filing of AT&T's opposition to Qwest's motion for a hearing, Qwest files its Second Motion, seeking to amend its Answer to retract the admission regarding its SGAT rates and withdraw its jurisdictional defenses.[3] In its Second Motion, Qwest identifies no justification for this retraction of an admission and 180 degree change in position, and indeed, there appears to be none.[4] Granting Qwest leave to amend in this manner, at this late date, and under these circumstances would prejudice AT&T, causing undue delay and unfair surprise. Accordingly, Qwest's Second Motion should be denied.

II. GRANTING QWEST'S MOTION WOULD NOT PROMOTE FAIR AND JUST RESULTS

While the Washington Administrative Code states: "The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results,"[5] allowing Qwest to amend its pleadings in this case would not promote fair and just results. Courts have held that parties' pleadings may be amended except where amendment would result in prejudice to the opposing party.[6] Generally, the touchstone for the denial of a

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[3] Qwest first suggested that it would seek to amend its answer during a call between counsel for AT&T and counsel for Qwest on January 3, 2005. During that call, counsel for AT&T, Mr. Thompson, sought to have counsel for Qwest agree to discuss stipulations of fact to potentially avoid the need for any hearing. During the call, however, counsel for Qwest, Ms. Anderl, asserted that Qwest was now going to insist that AT&T "prove its case," and that Qwest believed that issues of fact existed. When asked what issues of fact Qwest believe existed, Ms. Anderl identified the calculation of a just and reasonable rate. When Mr. Thompson pointed out that Qwest had already admitted that point in its Answer, Ms. Anderl responded that Qwest may have to change that. While it was not clear at the time that Qwest would in fact take the remarkable action of attempting to withdraw an admission, this circumstance simply further emphasizes that there is no good faith basis for Qwest's attempted amendment.

[4] It was incumbent on Qwest to assert its justification for amending its Answer in its Second Motion. AT&T strongly opposes any attempt Qwest may make to raise new arguments in its Reply brief to which AT&T was not given an opportunity to respond.

[5] WAC 480-07-395(5).

[6] *See Caruso v. Local Union No. 690,* 100 Wn.2d 343, 349 (1983); *Herron v. The Tribune Publishing Co.*, 108 Wn.2d 162, 165 (Wash 1987).

motion to amend is the prejudice such an amendment would cause to the nonmoving party.[7] Factors that to be considered in determining whether permitting the amendment would cause prejudice include the good faith of the moving party, undue delay and unfair surprise.[8] In this case, all of these factors mandate denying Qwest's Motion.

A. There Is No Good Faith Basis For Qwest's Amendment

The burden is on Qwest to demonstrate the need for its proposed amendment.[9] Yet, it offers no reason why six months after AT&T's Complaint was filed, and just 28 days after already amending its Answer once, Qwest should be permitted to retract its admission against interest and introduce a whole new cross complaint for affirmative relief. Presumably, Qwest had a good faith basis for admitting that the SGAT rates are just and reasonable in its Answer and First Amended Answer. Qwest fails to show that any circumstances have changed since the filing of those documents or to otherwise establish a good faith basis for its drastic change in position. For this reason alone, Qwest's Second Motion should be denied.

Moreover, the facts and circumstances indicate that there is no good faith basis for Qwest's attempt to withdraw its admission against interest or change its conduit rates. First,

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[7] *See Caruso,* 100 Wn.2d at 350.

[8] *See Wilson v. Horsely*, 137 Wn.2d 500, 505-506 (Wash. 1999). Common reasons for denying leave to amend are that amendment will result in undue prejudice to other party, is unduly delayed, is not offered in good faith, or that party has had sufficient opportunity to state claim and has failed. *Hall v Aetna Casualty & Surety Co.*, 617 F2d 1108 (5th Cir.1980). In determining whether granting of amendment will be potentially prejudicial, court shall consider the following: (1) good faith of movant; (2) extent to which there has been undue delay in proffering amendment; (3) degree to which amendment would needlessly delay final disposition of case. *L. D. Schreiber Cheese Co. v Clearfield Cheese Co.* 495 F. Supp. 313 (W.D. Pa. 1980).

[9] A finding of good faith must have at least prima facie showing of possibility of amender's ability to establish factual support for new matters sought to be pleaded. *Billy Baxter, Inc. v Coco-Cola Co.* (S.D.N.Y 1969), *aff'd* 431 F.2d 183 (2d Cir. 1970), *cert den.* 401 US 923 (1971), *reh den.* 401 US 1014 (1971).

Qwest's initial Answer, and its First Amended Answer both admit that the SGAT rates are just and reasonable under federal and state law. Presumably, Qwest had a good faith basis for admitting the issue, twice.

Second, as mentioned above, the timing and circumstance of Qwest's Second Motion strongly indicate a lack of good faith. On the eve of motions for summary determination, the Qwest decided it wanted to force an evidentiary hearing. So it filed a motion for evidentiary hearing, in which it argued that issues of fact existed, including, Qwest asserted, the issue of calculating the proper just and reasonable conduit occupancy rate. In opposition to Qwest's motion, AT&T pointed out that no factual dispute existed regarding the calculation of a just and reasonable rate because Qwest had already admitted in its Answer that its SGAT conduit rates were just and reasonable under 47 U.S.C. § 224 and RCW 80.54.040. Qwest's reaction to AT&T's point is to attempt to amend its answer to retract that admission. These circumstances strongly indicate that there is no good faith basis for the retraction.

Third, Qwest identifies no facts, revelation in discovery, or otherwise that has lead to its need to seek this amendment of its Answer. And indeed, there is none. Qwest's proposal is not the product of the discovery of new facts or changed circumstances. Rather, it is the product of Qwest's desire to avoid the inevitable summary disposition that would result if its admission were left unchanged. Indeed, even if Qwest were now allowed to amend its Answer, its prior admission against interest would be admissible evidence, which would support AT&T's case.[10]

[10] *See Bussard v. Fireman's Fund Indem. Co.*, 44 Wn.2d 417, 420 (Wash. 1954)(pleading which has been superseded by amendment is admissible in evidence as utterance of party).

Finally, Qwest's SGAT rates are the product of entirely separate Commission proceeding.[11] For example, in the Interconnection Agreement with which the SGAT rates were associated and which was submitted to the Commission, Qwest states that Qwest's conduit rental fees "are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission . . . ." (Compl. Exh. 7, § 10.8.3). Similarly, Qwest proffered its SGAT rates, calculated in accordance with the FCC's formula, to the Commission as just and reasonable rates in connection with its Section 271 proceeding and then each year thereafter making minor adjustments in the rate, but never, to AT&T's knowledge, changing the method of calculation or objecting that they were not just and reasonable.[12] Indeed, as Qwest's most recent discovery response demonstrates, its SGAT rates have been amended several times -- the most recent time, establishing the current rate, actually decreasing the conduit rental rate.[13] Finally, Qwest has used the SGAT rates with carriers, other than AT&T. Thus, despite having lived under the SGAT rates (with regard to all other telecom providers anyway) for several years, despite having had amended the rates several times, and despite having represented to the Commission and other parties that those rates were just and reasonable under 47 U.S.C. § 224 and RCW 80.54.040, Qwest now seeks to avoid the admission.

Reversing its position at this late date in the proceedings, as well as the other facts surrounding Qwest's prior admissions of just and reasonable rates, strongly suggest that Qwest's request to amend its answer to retract its admission against interest has no good faith basis. At the January 19, 2005 Pre-Hearing Conference Qwest explained its strategy: Qwest seeks to force

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[11] *See, e.g., In the Matter of the Petition of Qwest Corp., to Modify its Statement of Generally Available Terms and Conditions*, Docket No. UT-043026, Order No. 1 (May 26, 2004).

[12] *See* Chart of Qwest SGAT filings, produced in response to AT&T's Second Set of Document Requests, attached hereto as Exhibit 1.

[13] *See* 2004 SGAT filing, Compl. Exh. 9.

AT&T to prove every element of its case, even if Qwest has admitted the facts underlying AT&T's legal claims and even if Qwest does not have a good faith basis for denying them. This is not the "fair and just" result contemplated by WAC 480-07-395.

B. Granting Qwest's Second Motion Would Cause Undue Delay And Unfair Surprise, And Thus Prejudice AT&T

Qwest's Second Motion comes nearly six months after AT&T filed its Complaint, and after both parties have undertaken and completed discovery. If permitted, Qwest's Second Amended Answer would effectively change the focus of this proceeding and nullify the efforts that AT&T has undertaken in good faith during the six months following the filing of its Complaint. Qwest's proposed Second Amended Answer would now require AT&T to prove what a just and reasonable rate is under 47 U.S.C. § 224 and RCW 80.54.040. To accomplish that, AT&T would need to re-open discovery and seek production of Qwest's cost and other relevant data. In addition, AT&T likely would need to find and retain an expert witness.

Furthermore, Qwest provides no justification for its long delay in making this amendment. Nor can it. Nothing suggests that the facts or legal issues underlying Qwest's original admission that the SGAT rates are just and reasonable have changed since it filed its initial Answer on August 25, 2004 or its First Amended Answer Qwest on December 22, 2004.[14]

In addition, Qwest's complete reversal, and in particular the delay associated with the reversal, constitutes unfair surprise to AT&T. AT&T had every reason to rely on Qwest's multiple admissions that the SGAT rates were just and reasonable under 47 U.S.C. § 224 and RCW §§ 80.54.030, 80.04.110. As noted above, Qwest's admission was consistent with the

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[14] A finding of good faith must have at least prima facie showing of possibility of amender's ability to establish factual support for new matters sought to be pleaded. *Billy Baxter, Inc. v Coco-Cola Co.* (S.D.N.Y 1969), *aff'd* 431 F.2d 183 (2d Cir. 1970), *cert den.* 401 US 923 (1971), *reh den.* 401 US 1014 (1971).

position it has taken previously in other proceedings, including the parallel conduit rate proceedings currently ongoing in Idaho and Utah; Qwest's Section 271 proceeding; and Qwest's repeated submissions for Commission approval.[15] In addition, Qwest had ample opportunity to object to or change the calculation of these rates during interconnection agreement negotiations and/or arbitration it engaged in with other carriers. However, there is no evidence that Qwest has ever challenged the method of calculation since SGATs were first introduced. In preparing its case, AT&T had no reason to believe that Qwest would deviate so significantly from the position it has consistently taken over the past several years and was more than justified in relying on Qwest's representations.

C. Qwest's Last-Minute Introduction Of A Cross Complaint Should Not Be Permitted

Moreover, Qwest's proposal to introduce a Cross Complaint, in which Qwest seeks to have a ratemaking proceeding started to establish a conduit occupancy rate of $2.00 per foot per year (nearly 6 times higher than the current SGAT conduit rate) would introduce whole new facts and issues to the case not raised by AT&T previously. At no time did AT&T challenge or call into question Qwest's SGAT rate calculation methodology or results. Qwest's amendment would cause this case to escalate from a simple case of rate discrimination into a full-blown rate setting proceeding. A defendant is not entitled to amend its answer and introduce new counterclaims where the new assertions will cause prejudice to plaintiff and delay by introducing many factual and legal issues that were not originally part of the case.[16] Because AT&T's

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[15] *See* Chart of Qwest SGAT filings, produced in response to AT&T's Second Set of Document Requests, attached hereto as Exhibit 1.

[16] *Chrysler Corp. v Fedders Corp.*, 540 F Supp 706, 712 (S.D.N.Y. 1982) (a supplemental answer should state new or additional defenses to the claim set forth in the original complaint

Complaint did not seek or contemplate a ratemaking proceeding, Qwest's proposed Cross Complaint would create an entirely separate proceeding, and as such, should not be permitted as an amendment at this point.

D. AT&T's Complaint Is Not The Appropriate Docket For Setting Qwest's Rates

Indeed, opening Qwest's SGAT rates to review in this proceeding would have wide-ranging effect, not just on AT&T, but on other telecommunications carriers in Washington. The SGAT rates, and the method by which they were calculated, have been incorporated into numerous interconnection agreements between Qwest and various telecommunications carriers. Re-opening the calculation of just and reasonable rates would affect each of those agreements and the parties who entered into them. Likely, many of the affected parties would also seek to participate.

In addition, re-opening the calculation of Qwest's SGAT rates would call into question Qwest's Section 271 authorization to compete in the inter-exchange market. One of the checklist items the Commission and the FCC were required to consider prior to granting Qwest's application for Section 271 authority was whether Qwest granted "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [Qwest] at just and reasonable rates in accordance with the requirements of section 224."[17] These issues, also, are inappropriate for resolution as a part of this complaint proceeding.

In essence, Qwest seeks to initiate a collateral attack on the same SGAT rates it developed and submitted to the Commission for approval. The prejudice AT&T would suffer as

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and should not introduce a new controversy into the case)(citing 3 Moore's Federal Practice P. 15.16(4), at 15-251 to -252 (2d ed. 1982)).

[17] 47 U.S.C. § 271(c)(2)(B)(iii).

a result more than outweighs any necessity Qwest may have for pursuing such an approach. Moreover, no immediate prejudice to Qwest will result. It has operated under the SGAT rates without complaint for several years. To the extent this arrangement is no longer acceptable to Qwest, nothing precludes it from attempting to attack its SGAT as a part of a separate rate setting docket. But for purposes of this proceeding, Qwest must live with the rates.

E. Qwest's "Withdrawal" Of Its Jurisdictional Challenge Is Incomplete

While Qwest appears to amend its Answer to eliminate its first affirmative defense, challenging the Commission's jurisdiction, its proposed amendment does not fully withdraw the attack. Qwest's proposed Second Amended Answer deletes its formal statement of its first affirmative defense. However, in a footnote to paragraph 17, Qwest cannot bring itself to fully withdraw its challenge to the Commission's jurisdiction. Specifically, Qwest states that "Qwest admits that the Commission has certified to the FCC that it regulates the rates, terms and conditions for pole attachments in Washington." (Second Amended Answer ¶ 17). The footnote attached to the sentence then argues that

> RCW 80.54.010 grants the Commission certain authority to regulate rates, terms and conditions for pole attachments (which include duct and conduit). However, even though RCW 80.54.060 states that the Commission "shall adopt rules, regulations and procedures relative to the implementation of this chapter," it has not adopted rules.

(Second Amended Answer fn.9). With this footnote, Qwest is reserving the argument that it alleges to withdraw – namely that the Commission lacks jurisdiction under 47 U.S.C. § 224(c) because it has not, according to Qwest, adopted rules. (*Compare* First Amended Answer fn. 9). While AT&T believes that the Commission has jurisdiction, unless and until Qwest fully withdraws its claims that the Commission does not, the issue remains hanging over the proceeding, precisely as noted in AT&T's opposition to Qwest's motion for an evidentiary

hearing. Of course, AT&T does not oppose Qwest dropping this issue, and Qwest technically does not need to amend its answer to do so. Qwest could simply represent on that record that Qwest no longer takes the position that the Commission lacks jurisdiction. However, that representation needs to be clear and unequivocal, unlike its proposed amendment.

III. CONCLUSION

Granting Qwest's motion to withdraw its admissions against interest, and incompletely withdraw its objection to the Commission's jurisdiction this far into the case, without justification or good cause, would not promote fair and just results. Its effect would be the exact opposite. Qwest's amended complaint would cause delay and introduce significant new issues to the case, forcing AT&T, Commission Staff and the Commission to expend their resources in a proceeding regarding SGAT rates that Qwest has previously affirmatively represented to the Commission to be just and reasonable – and that are indeed just and reasonable. This result is not "fair and just," and thus, Qwest's Second Motion should be denied.

Respectfully submitted,

Gregory J. Kopta, Esq.
DAVIS WRIGHT TREMAINE LLP
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Phone: (206) 628-7692
Fax: (206) 628-7699
E-mail: gregkopta@dwt.com

T. Scott Thompson, Esq.
Brian M. Josef, Esq.
Rita Tewari, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., N.W.

Second Floor
Washington, D.C. 20006
Telephone: (202) 659-9750

Meredith R. Harris, Esq.
AT&T Corp.
One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1850

Attorneys for AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.

January 26, 2005

CERTIFICATE OF SERVICE

I, Melissa K. Geraghty, do hereby certify that on this 26th day of January, 2005, a true and correct copy of the foregoing has been sent by first class U.S. Mail, postage prepaid, and electronic mail, to the following:

Mark S. Reynolds Qwest Corporation 1600 7th Avenue, Room 3206 Seattle, WA 98191 E-mail: Mark.Reynolds3@qwest.com Adam L. Sherr Qwest Corporation 1600 7th Avenue, Room 3206 Seattle, WA 98191 E-mail: adam.sherr@qwest.com Greg J. Trautman Attorney General's Office PO Box 40128 Olympia WA 98504 E-mail: gtrautma@wutc.wa.gov	Lisa Anderl Qwest Corporation 1600 7th Avenue, Room 3206 Seattle, WA 98191 E-mail: Lisa.Anderl@qwest.com Ted Smith Stoel Rives LLP 201 South Main Street, Suite 10100 Salt Lake City, UT 84111 E-mail: tsmith@stoel.com Simon ffitch Attorney General's Office Public Counsel 900 4th Avenue, Suite 2000 Seattle, WA 98164 E-mail: simonf@atg.wa.gov

Dated this 26th day of January, 2005.

Melissa K. Geraghty

EXHIBIT 1

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-009A

REQUEST:

In Qwest's responses to AT&T Requests for Admission Nos. 1 and 2, Qwest admits that the rates charged under the conduit occupancy licenses attached to Claimants' Complaint at Exhibit 5 "were not calculated pursuant to the Federal Communications Commission's ("FCC") conduit rental rate formula," as expressed in AT&T Requests for Admission No. I and defined in 47 C.F.R. § 1.1409(e)(3). Admit that the per foot, per year conduit occupancy rates charged to Claimants under the conduit occupancy licenses exceed the rate that would be derived today if the FCC conduit rental formula was applied using Qwest's currently applicable data for Washington. If Qwest denies this request for admission, please provide all facts and documents supporting Qwest's denial.

RESPONSE:

Qwest objects to this request for admission on the basis that the rate produced using the FCC formula is not relevant to the dispute in this case, which concerns AT&T's obligations under a voluntarily negotiated and binding contract for conduit occupancy. Without waiver of this objection, Qwest admits this request for admission.

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-010A

REQUEST:

Admit that the per foot, per year conduit occupancy rates charged to Claimants by Qwest under the conduit occupancy licenses attached to the Complaint at Exhibit 5, and as expressed in Qwest's invoices attached to the Complaint at Exhibit 8 exceed Claimants' current share of the fully-allocated costs of Qwest's conduit system, based on Qwest's total operating expenses and capital costs of owning and maintaining conduits, including depreciation, administrative, and maintenance expenses, taxes, and a return on investment at the authorized rate of return. If Qwest denies this request for admission, please provide all facts and documents supporting Qwest's denial.

RESPONSE:

Deny. Qwest has not performed an analysis of the rates using the criteria set forth in this request. Qwest therefore does not know whether the statements contained therein are true or false, and Qwest can neither admit nor deny this request for admission.

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-011A

REQUEST:

Admit that the per foot, per year conduit occupancy rates charged under the conduit occupancy licenses attached to Claimants' Complaint at Exhibit 5 exceed the rates Qwest charges other telecommunications carriers for occupancy of Qwest-owned or-controlled conduit.

RESPONSE:

See the responses to Data Requests 02-013 and 02-014.

Respondent: Roy Rietz

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-012A

REQUEST:

Admit that, since the effective date of each conduit occupancy license attached to the Complaint at Exhibit 5 through the present, Qwest has charged Claimants the rates set forth in the conduit occupancy licenses.

RESPONSE:

Admit.

Respondent: Roy Rietz

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-013A

REQUEST:

Admit that Claimants paid in full the amounts set forth in the conduit occupancy licenses and charged by Qwest until July 2003.

RESPONSE:

Admit.

Respondent: Roy Rietz

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-013I

REQUEST:

With regard to Qwest's response to Claimants' Data Request No. 9 [AT&T 01-009I], does Qwest charge any telecommunications services provider, other than Claimants, annual per-foot conduit occupancy lease rates that differ from the rates set forth in Qwest's current Statement of Generally Available Terms and Conditions ("SGAT")?

RESPONSE:

Qwest objects to this data request on the basis that it calls for information not relevant to the issues presented in this case, which concern AT&T's obligations under a valid and binding contract. The rates charged to others is a matter that is not relevant under Chapter 80.54 RCW unless the complainant is a licensee, and AT&T has not claimed that it is a licensee under that Chapter. Nor is it relevant under the other provisions of the law cited by AT&T. The non-discrimination provisions of Chapter 80.36 RCW apply to the provision of telecommunications services, not to conduit leasing, which is governed exclusively by Chapter 80.54 RCW. If the legislature had intended to require that a utility charge the same rate to all leasees, the legislature would not have limited the applicability of RCW 80.54.070 to "licensees".

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-014A

REQUEST:

Admit that, since July 2003, Claimants have paid Qwest $0.35 per foot per year for conduit.

RESPONSE:

Deny. In Washington, AT&T has paid the full amount due and owing under the contract for each year of the contract to date, evidencing AT&T's belief that the rates are lawful and reasonable, and evidencing AT&T's intent to be bound by the contract. For example, in January 2004, Qwest sent AT&T seven separate bills for conduit access for the year 2004, billing the rates set forth in the conduit licences. AT&T paid each bill in full within 30 days of the bill date.

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-014I

REQUEST:

If Qwest answers Data Request No. 13 in the affirmative. identify and describe the annual per-foot conduit occupancy lease rates that Qwest charges and the entities so charged.

RESPONSE:

See Qwest's response to Data Request No. 13.

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
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INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-014P

REQUEST:

Please produce Attachment Q, referenced in Qwest's response to AT&T Data Request No. 3 [AT&T 01-0031] and AT&T Request for Production No. 4 [AT&T 01-004P].

RESPONSE:

The reference to "Attachment Q" was a transcription error. There is no Attachment Q in Washington.

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-015I

REQUEST:

Identify the date on which Qwest first published its per foot, per year innerduct occupancy fee in an SGAT for the state of Washington. Please provide all SCAT innerduct occupancy rates from and including Qwest's initial SGAT publication date through the present.

RESPONSE:

Attachment A contains the rate history for the WA innerduct occupancy rates.

Respondent: Cindy Pierson

QWEST CORPORATION
STATE: Washington
DOCKET NO: UT-041394
CASE DESCRIPTION: AT&T CORP., AND AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., v. QWEST CORP.
INTERVENOR: AT&T Corp. and AT&T Communications of the Pacific Northwest, Inc.
REQUEST NO: AT&T 02-015P

REQUEST:

Produce all documents and other materials that relate to or were referenced in Qwest's answers to Data Request Nos. 13-15 above.

RESPONSE:

Qwest objects to this data request on the basis that the request for all documents is overly broad and unduly burdensome. Qwest further objects on the basis that the request calls for information already provided, and/or already in the possession of AT&T - eg., copies of the invoices sent to AT&T Corp. under the contract. Without waiver of this objection, Qwest responds that it is searching for documents that are responsive to this request and will provide them as they become available.

WA Innerduct Occupancy Fee Rate History

WASHINGTON
Docket No. UT-041394
ATT 02-015I
Attachment A

Section	Element	Rate	Exh A	Date
INNERDUCT OCCUPANCY FEE				
10.8.7	Innerduct Occup0ancy Fee, per Foot, per Year	ICB	Original	03/22/00
10.8.11	Innerduct Occup0ancy Fee, per Foot, per Year	$0.38	1st Revision	06/29/01
10.7.11	Innerduct Occup0ancy Fee, per Foot, per Year	$0.39	8th Revised 5th Amended	07/11/03
10.7.11	Innerduct Occup0ancy Fee, per Foot, per Year	$0.3500	9th Revised	02/24/04
	9th Revised Exhibit A was withdrawn			
10.7.11	Innerduct Occup0ancy Fee, per Foot, per Year	$0.3500	8th Revised 7th Amended	04/01/04