

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T CORP., AND AT&T
COMMUNICATONS OF THE PACIFIC
NORTHWEST, INC.,

Complainants,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-041394

COMMISSION STAFF'S
RESPONSE TO QWEST
CORPORATION'S MOTION
FOR LEAVE TO FILE A
SECOND AMENDED ANSWER,
ADDING CROSS COMPLAINT

¹ Qwest has filed a motion to file a second amended answer in this proceeding, and to add a cross-complaint. First, Qwest wishes to withdraw its allegations contesting the Commission's jurisdiction to hear this matter. Staff does not oppose this portion of Qwest's motion. Second, however, Qwest wishes to now "clarify that it does not believe the SGAT conduit rates are fair, just, reasonable or sufficient in accordance with RCW 80.54.030."¹ (Qwest Motion, ¶ 1.) This request

¹ Qwest's cross-complaint alleges that the current SGAT rates are not fair, just, reasonable, or sufficient under RCW 80.54.040.

directly conflicts with Qwest's previously filed answer, in which Qwest admitted the allegations in paragraph 16 of AT&T's complaint, which states, "The 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."

2 Staff believes that the Commission should not grant the portion of Qwest's motion that would amend its answer to challenge the legal sufficiency of its SGAT conduit rates.² These rates were established after a lengthy review by Commission Staff and numerous parties that are not currently involved in this proceeding. (*See* Docket UT-003040). By definition, they are "generally applicable" rates offered to carriers purchasing conduit in Washington. Changes to these rates may adversely impact these carriers.

3 This docket, which concerns a dispute between AT&T and Qwest, is not the proper forum for determining the sufficiency of rates charged to other carriers, when they cannot be heard upon the issue or protect their rights and interests. If the Commission wishes to address the issue of the legal sufficiency of the SGAT rates (as opposed to the question of whether AT&T should be obliged to pay conduit license rates or SGAT rates for the use of Qwest's conduit), the

²WAC 480-070395(5) states that "the commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results."

Commission should do so in another docket in which all affected parties may participate.

DATED this 26th day of January, 2005.

ROB MCKENNA
Attorney General

GREGORY J. TRAUTMAN
Assistant Attorney General
Counsel for Commission Staff