

Qwest

1600 7th Avenue, Room 3206
Seattle, Washington 98191
Phone (206) 345-1574
Facsimile (206) 343-4040

Lisa A. Anderl

Associate General Counsel
Policy and Law Department

January 28, 2005

Via E-mail and U.S. Mail

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-041394 - AT&T Conduit Complaint
Objection to Portions of Prehearing Conference Order

Dear Ms. Washburn:

Qwest is writing in regard to the Prehearing Conference Order (“Order”) in this matter that was entered and served on January 21, 2005. That Order contains the following notice to the 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.”

Though Qwest does not believe it is technically necessary under applicable rules to file an objection to the portion of the Order with which it disagrees, in an excess of caution Qwest hereby notes its objection for the record. Qwest objects to paragraph 9 and portions of paragraph 10, which provide as follows:

- 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 prefilings 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.

Ms. Carole J. Washburn
January 28, 2005
Page 2

Consistent with its motion for an evidentiary hearing, Qwest does not believe that this case is susceptible of resolution in AT&T's favor absent a hearing. However, Qwest does agree that final resolution of this issue may be deferred until after the parties have attempted to agree to a set of facts, and Qwest believes that so long as the Order does not prejudice its ability to seek Commission review of this question, which it apparently does not, then no change to the Order is necessary at this time. Qwest would also note that the reference in paragraph 10 to the "proponent" of the facts appears to be in error, as the standard for summary determination actually requires that the facts be viewed in the light most favorable to the non-moving party.¹

Sincerely,

Lisa A. Anderl

LAA/llw

cc: All parties of record (*via e-mail and U.S. Mail*)

¹ *Saddle Mountain Minerals, LLC v. Joshi*, 152 Wn.2d 242, 248 (2004).