

Case No. ATT-T-04-1
CLAIMANTS' MOTION TO COMPEL
January 4, 2005

Pursuant to the Notice of Procedural Schedule entered by the Commission in this case on November 9, 2004, Claimants AT&T Corp. and AT&T Communications of the Mountain States, Inc. (jointly "AT&T") move the Commission for an order compelling Respondent Qwest Corp. to respond to AT&T's data request number 9.

I. AT&T's Interrogatory

On November 22, 2004, AT&T served on Qwest their first set of requests for data and production of documents. AT&T's data request number 9 asked

Identify and describe the terms, conditions, procedures and rates governing the rental and occupancy of Qwest conduit or support structures by all persons in Idaho other than Claimants. To the extent that such terms, conditions, procedures and rates may vary within Qwest's Idaho service territory, identify and describe any such differences. To the extent that such terms, condition, procedures and rates may differ currently from past terms, conditions, procedures and rates, please identify and describe these differences.

A copy of AT&T's first set of requests for data and production of documents is attached hereto. This request is relevant to AT&T's claim that Qwest is and has discriminated against AT&T by charging it rates for conduit occupancy that are greater than the rates charged to others. (*See, e.g.* Complaint ¶¶ 20, 22).

II. Qwest's Response

In response to data request number 9, Qwest stated, in part, that:

Third, with respect to non-CLECs, Qwest has entered into negotiated agreements allowing such parties access to conduit. However Qwest objects to providing these privately negotiated agreements because they are not relevant to the AT&T Corp. General Conduit License Agreement or the issues presented by Claimants in this docket, and as such, the privately negotiated agreements are not calculated to lead to the discovery of admissible evidence in this docket.

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A copy of Qwest's response in its entirety is attached hereto. Thus, Qwest has admitted that responsive documents exist, but refuses to produce them.

Qwest's objection as to "non-CLECs" and "privately negotiated agreements" is misplaced. Such agreements are relevant to AT&T's claim that Qwest's conduit occupancy rates are discriminatory. Neither the Idaho statute nor the federal statute, under which the State draws its power and scope of regulation, is limited to Qwest's conduit charges to "CLECs." Idaho Code §§ 61-502, 61-503 and 61-514; 47 U.S.C. § 224. Qwest is trying to draw an artificial and legally irrelevant distinction between CLECs and other telecommunications providers or public utilities. Yet, the rates that Qwest charges other entities is highly relevant to AT&T's claims of discrimination, regardless of the regulatory definition that Qwest chooses to impose upon them. Indeed, AT&T Communications of the Mountain States, Inc. is authorized by the Commission to act as both a CLEC and interexchange carrier.

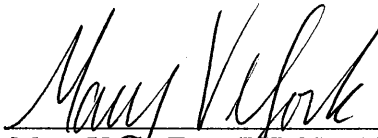
Qwest's other agreements may reveal charges substantially less than those imposed on AT&T. They are relevant to AT&T's claims and the request is reasonably calculated to lead to the discovery of admissible evidence.

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WHEREFORE, AT&T respectfully requests that the Commission order Qwest to produce all documents responsive to data request number 9, including those related to agreements with "non-CLECs."

January 4, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mary V. York, hereby certify that on the 4th day of January, 2005, an original, seven (7) true and correct copies, and an electronic copy of **COMPLAINANTS' MOTION TO COMPEL** were hand-delivered to:

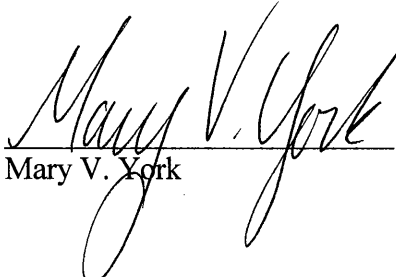
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and UPS Overnight, postage prepaid thereon, to:

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Mary V. York

Idaho
Case No. ATT-T-04-1
AT&T 01-009I

INTERVENOR: AT&T Corp. and AT&T Communications of the Mountain States, Inc.

REQUEST NO: 009I

Identify and describe the terms, conditions, procedures and rates governing the rental and occupancy of Qwest conduit or support structures by all persons in Idaho other than Claimants. To the extent that such terms, conditions, procedures and rates may vary within Qwest's Idaho service territory, identify and describe any such differences. To the extent that such terms, condition, procedures and rates may differ currently from past terms, conditions, procedures and rates, please identify and describe these differences.

RESPONSE:

Qwest objects to this data request on the ground that it is overly broad, unduly burdensome and is not calculated to lead to the discovery of admissible evidence and on the ground that it purports to impose a burden of disclosing information not readily available to Qwest and/or equally available to Claimants. Without waiving these objections, Qwest provides the following response.

The terms, conditions, procedures, and rates governing the rental and occupancy of Qwest conduit in Idaho, fall into a few basic categories.

First, Qwest has entered into numerous interconnection agreements with CLECs in Idaho, including with AT&T Communications of the Mountain States, Inc. Those agreements are filed as a matter of public record with the Idaho Public Utilities Commission and are available for review at the Commission. Many, if not all, of these agreements address the terms and conditions related to access to Qwest conduit. Qwest refers the Claimants to those agreements, which speak for themselves.

Second, if a CLEC has not entered into an interconnection agreement with Qwest, it can opt into the Statement of Generally Available Terms ("SGAT") that has been on file with the Idaho Public Utilities Commission for several years. In this case, the SGAT then becomes the interconnection agreement between Qwest and the CLEC. Each of Qwest's Idaho SGATs is a matter of public record in Idaho, as are the Exhibit A's to the SGATs which establish price terms for certain elements, including access to conduit. The current Qwest SGAT can be accessed at the following location:
<http://www.qwest.com/wholesale/clecs/sgatswireline.html>

Third, with respect to non-CLECs, Qwest has entered into negotiated agreements allowing such parties access to conduit. However, Qwest objects to providing these privately negotiated agreements because they are not relevant to the AT&T Corp. General Conduit License Agreement or the issues presented by Claimants in this docket, and as such, the privately negotiated agreements are not calculated to lead to the discovery of admissible evidence in this docket.

Respondent: Qwest Legal Department