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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an Investigation into Pole Attachments	:	DOCKET NO. 04-999-03
	:	
	:	REPLY COMMENTS OF QWEST CORPORATION
	:	

In accordance with the Notice of Further Agency Action and Scheduling issued by the Public Service Commission of Utah (hereinafter “Commission”) on March 19, 2004, Qwest Corporation (“Qwest”) hereby submits its reply to the initial comments of AT&T Corp., and to the comments of various other interested parties in this investigation.

I. The Initial Comments of AT&T

In its initial comments to the Commission, AT&T requested that the Commission include consideration of rules and regulations related to conduit.¹ Qwest, however, agrees with the Utah Rural Telecom Association’s (“URTA’s”) comments that the Commission should only address pole attachment issues in this docket because the

¹ See AT&T Initial Comments, pp. 2-7.

controversy over pole attachments needs swift resolution.² Like URITA, several parties in this docket have demonstrated that the pole attachment issues, with PacifiCorp in particular, are actual live issues in dispute that have severely impeded business activities and contract negotiations. In contrast, AT&T has alluded to a Qwest dispute and a pending FCC docket that does not involve Utah conduit, apparently in an attempt to create false urgency with respect to the need for conduit rules and regulations. In fact, no urgency exists with respect to Qwest rates because this Commission has already considered and approved Qwest's conduit rates, and AT&T has recently negotiated inclusion of those rates in its most recent interconnection agreement with Qwest. Accordingly, Qwest objects to inclusion of conduit issues in this docket if the same would delay resolution of the pole attachment issues.

With respect to AT&T's initial comments, AT&T misstated, as it did before the FCC, the facts underlying its "dispute" with Qwest. AT&T and Qwest are currently engaged in a dispute before the FCC that involves contracts that were negotiated during the 1980's between Qwest and the AT&T interexchange (IXC) company. That dispute does not involve any requests for conduit by an AT&T CLEC entity under state approved SGATs or interconnection agreements. Under the 1980's IXC contracts at issue before the FCC, AT&T's IXC entered into license agreements with Qwest so that the IXC could use Qwest's conduit for its interexchange traffic in several states. Renewal invoices for those 1980's conduit license agreements are issued on an annual basis pursuant to the negotiated terms, rates and conditions in the original contracts. AT&T and Qwest have not commenced renegotiation of those contracts, including those related to licenses for conduit located in Utah, despite the fact that Qwest has previously advised AT&T that it

² See URITA Initial Comments at ¶ 1.

is willing to renegotiate those agreements and that it is willing to include rates that are consistent with the current FCC formula. In most cases, those rates are also consistent with Qwest's SGAT rates. Despite Qwest's willingness, AT&T has refused to renegotiate those contracts. Instead, through its CLEC arm rather than through its IXC, AT&T has requested the FCC to nullify the IXC contracts with Qwest and grant retroactive rate relief.

With respect to this Commission's consideration of Qwest's conduit rates, terms and conditions, AT&T failed to disclose the fact that this issue has already been addressed by the Commission. Qwest's Utah SGAT, which includes the rates, terms and conditions under which CLECs may order conduit, was reviewed and approved by the Commission in Qwest's § 271 proceeding.³ As mentioned above, AT&T also failed to disclose the fact that AT&T of the Mountain States (the AT&T CLEC affiliate in Utah), has already agreed to negotiated conduit rates, terms and conditions with Qwest consistent with Qwest's Utah SGAT. The most recent interconnection agreement between Qwest and AT&T of the Mountain States is presently before the Utah Commission in an arbitration proceeding in docket number 04-049-09. Conduit rates are not at issue in that arbitration, however, because Qwest and AT&T reached agreement on those rates during their negotiations for the interconnection agreement. Consequently, there is no issue with respect to Qwest's conduit rates, terms and conditions in Utah. To the extent the Commission seeks to generically include conduit regulation in this docket,

³ Final Order Regarding Qwest 271 Compliance, In the Matter of the Application of Qwest Corporation for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B), Docket No. 00-049-08 (Utah PSC Jul. 8, 2002) at 2-4. Qwest has amended portions of its SGAT from time to time since this Order was issued, and those amended SGAT provisions have become effective by operation of law. *See*, 47 U.S.C. 252(f)(3)(B).

Qwest supports rules and regulations consistent with the terms set forth in its approved Utah SGAT.

II. Comments of Other Parties

Several parties filed initial comments relating to their current billing and contract disputes with PacifiCorp. URTA identified its concerns about PacifiCorp's proposed rate increase of 120 percent, and its concerns about PacifiCorp's attempt to back bill URTA members and penalize them for pole attachments that PacifiCorp alleges are unauthorized.⁴ URTA requested the Commission to resolve these billing and penalty issues in this docket.⁵ Echoing the concerns of Comcast, XO also raised its concerns about PacifiCorp's attempt to dramatically raise its pole attachment rates in Utah by between 100-500%.⁶ Similarly, AT&T voiced its concerns with PacifiCorp's proposed 500% rate increase. Like the other parties in this docket who utilize PacifiCorp poles, AT&T noted that it "was paying PacifiCorp an annual rate of \$4.65 per pole" and that "without notice or a meaningful opportunity to negotiate" PacifiCorp unilaterally increased its annual pole attachment rate "in excess of \$29 per pole."⁷

Not surprisingly, Qwest has similar concerns with PacifiCorp's proposed rate increase. Qwest and PacifiCorp had a pole attachment agreement in place governing the parties' relationship in Utah. PacifiCorp terminated that agreement on December 31, 2002. Since then, Qwest and PacifiCorp have been involved in negotiations over the rates, terms and conditions for a new agreement in Utah, but unfortunately those discussions have stalled. From Qwest's perspective, there are several reasons for this.

⁴ See URTA Initial Comments at ¶¶ 1, 7-8.

⁵ *Id.*

⁶ See XO Utah, Inc., Initial Comments at p. 2.

⁷ See AT&T Initial Comments at p. 3.

Among other things, Qwest believes that PacifiCorp's proposed rate increase is exorbitant, and that PacifiCorp's pole attachment rate formula is faulty. Moreover, like the other parties in this docket, Qwest also received a back bill and penalty claim from PacifiCorp as a result of an "audit" conducted by PacifiCorp during 2003 which allegedly identified PacifiCorp poles on which Qwest had unauthorized attachments. Yet, in various spot checks conducted by Qwest it determined that many of the poles for which PacifiCorp is seeking back billing and penalties are poles that Qwest owns! Like its proposed new rates, the back bills, penalty charges and audit costs that PacifiCorp is attempting to assess are for rates that Qwest never agreed to.

In its initial comments Qwest did not ask the Commission to address these specific disputed issues between itself and PacifiCorp in this generic docket. However, URITA, and others, have made such a request. Thus, to the extent the Commission perceives this docket to be an open forum where these kinds of disputed contract and billing issues between parties can, or should be resolved, then Qwest respectfully requests that its disputed issues with PacifiCorp be included for resolution as well.

RESPECTFULLY SUBMITTED: April 16, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **REPLY COMMENTS OF QWEST CORPORATION** in Docket No. 04-999-03 was mailed or hand-delivered on this 16th day of April, 2004, to the following:

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