

Jerold G. Oldroyd, Esq. (#2453)
 Angela W. Adams, Esq. (#9081)
 Ballard Spahr Andrews & Ingersoll, LLP
 One Utah Center, Suite 600
 201 South Main Street
 Salt Lake City, Utah 84111-2221
 Telephone: (801) 531-3000
 Facsimile: (801) 531-3001

J. Davidson Thomas, Esq.
 T. Scott Thompson, Esq.
 Brian M. Josef, Esq.
 Cole, Raywid & Braverman, LLP
 1919 Pennsylvania Ave., N.W.
 Second Floor
 Washington, D.C. 20006
 Telephone: (202) 828-9873

Richard Wolters, Esq.
 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 Mountain States, Inc.**

Submitted October 29, 2004

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

AT&T CORP., a New York Corporation;)	
AT&T COMMUNICATIONS OF THE)	
MOUNTAIN STATES, INC., a Colorado)	Docket No. 04-087-73
Corporation,)	
)	
Claimant,)	CLAIMANTS' OPPOSITION TO
vs.)	QWEST'S MOTION TO COMPEL
)	
QWEST CORPORATION, a Colorado)	(Administrative Law Judge Steven F.
Corporation,)	Goodwill)
)	
Respondent.)	

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Claimants, AT&T Corp. and AT&T Communications of the Mountain States, Inc. (jointly “AT&T”) by and through their attorneys, Ballard, Spahr, Andrews & Ingersoll, LLP submit this opposition to Respondent Qwest Corporation’s Motion To Compel Responses To Data Requests Or, In the Alternative, Motion To Expand Data Requests filed October 15, 2004 (“Motion To Compel”).

I. PROCEDURAL BACKGROUND

On June 14, 2004, AT&T filed its Request For Agency Action (“Complaint”) in this action. In the Complaint, AT&T seeks to have the Commission declare that the annual rental rates charged by Qwest to AT&T (from \$2.10 to \$2.98 per innerduct foot per year) are unlawful under Utah Code §§ 54-4-13(1) and 54-3-1, and the federal Pole Attachment Act, 47 U.S.C. 224, and to declare that the rate for conduit occupancy identified in Qwest’s SGAT (\$0.3455 per foot per year) is lawful under § 54-4-13. AT&T also seeks refunds of payments made by AT&T to Qwest based on Qwest’s overcharges. On July 19, 2004, Qwest answered AT&T’s Complaint.

On September 8, 2004, the parties appeared before ALJ Goodwill to set a schedule for discovery and disposition of this case. At that hearing, counsel for AT&T and Qwest initially agreed informally to limit discovery to 10 interrogatories and 10 document requests. However, after input from the Utah Department of Commerce’s Division of Public Utilities (“DPU”), all parties agreed simply to be bound by the rules of civil procedure.

On September 21 and 22, 2004 Qwest, AT&T, and the DPU exchanged discovery requests. Pursuant to the Commission’s Rules and the rules of civil procedure, the agreement of the parties at the scheduling conference, and because the issues in this case are, as discussed below, extremely narrow, AT&T served on Qwest 13 data requests, 13 document production requests, and 10 requests for admissions. Yet, Qwest served 62 interrogatories (styled as “data requests”). Qwest’s requests, in addition to being excessive, are far afield of the legitimate

issues in this case. Accordingly, on September 28, 2004, counsel for AT&T, Mr. Thompson and Mr. Oldroyd, contacted counsel for Qwest, Mr. Smith, to discuss AT&T's objection to both the number of interrogatories, but also the irrelevant scope of the interrogatories. Mr. Smith communicated that he would discuss the matter with Qwest. As Mr. Smith asserts in his affidavit, he later contacted Mr. Oldroyd to inform him that Qwest would not narrow the number or scope of its interrogatories.

On October 13, 2004, AT&T timely responded to Qwest's discovery. In its responses, AT&T set forth objections, and answers, where appropriate, to the first 25 of Qwest's interrogatories. Pursuant to the rules and its understanding of the limits set in this case under those rules, regarding all requests after the first 25 interrogatories (*i.e.*, after Data Request 7(f)), AT&T objected that the interrogatories exceeded the permitted limit. ***In addition***, AT&T answered all of the interrogatories after number 7(f) except for three (numbers 23, 24, and 27) by stating its additional objections to the individual interrogatories on grounds of relevance, burden, and/or ambiguity. Thus, even absent any limitation on the number of interrogatories, AT&T would have objected to and not answered all of the interrogatories after number 7(f), except for numbers 23, 24, and 27.

II. AT&T BELIEVES THAT THE 25-INTERROGATORY LIMIT OF THE RULES OF CIVIL PROCEDURE APPLY IN THIS CASE, BUT WILL WITHDRAW ITS OBJECTION TO QWEST'S EXCEEDING THE LIMIT IN ORDER TO EXPEDITE RESOLUTION OF THESE ISSUES

In its Motion to Compel, Qwest asserts that discovery in this case is "informal," and the Commission never enforces any limit on interrogatories under its informal discovery rules. To prove its point, Qwest attaches copies of informal discovery served by AT&T in other proceedings before the Commission wherein AT&T asked more than 25 interrogatories. Qwest's assertion is incorrect in this case.

First, as noted above, the parties agreed at the prehearing scheduling conference to adhere to the rules of civil procedure regarding interrogatories, document requests, and requests for admission, which would include the limit to 25 interrogatories.

Second, Qwest is incorrect that the Commission's "informal" discovery rules automatically apply in this case. The AT&T discovery from another case that Qwest has submitted as proof that AT&T itself has recently served more than 25 interrogatories was served as a part of the Commission's docket 03-999-04, which was an open docket with multiple parties, addressing questions necessary to respond to the FCC's Triennial Review Order. In contrast, the current matter is a specific adjudication between two parties – *i.e.*, it is more akin to traditional litigation subject to the rules of civil procedure.

Nonetheless, rather than spend time and resources litigating the issue of discovery limits, AT&T will waive its objection to the number of interrogatories. However, as discussed below, that does not resolve the issue. With only a few exceptions, Qwest's interrogatories are wholly irrelevant and AT&T should not be compelled to respond to them. As to requests numbers 23, 24, and 27, AT&T supplements its responses below in the request-by-request section.

III. QWEST'S DISCOVERY REQUESTS ARE ALMOST UNIVERSALLY IRRELEVANT, UNDULY BURDENSOME, OR IMPOSED SOLELY FOR THE PURPOSE OF BURDEN AND HARASSMENT

While Qwest (understandably) prefers not to discuss the merits of its 60-plus interrogatories, even a cursory review establishes that Qwest's requests are far afield of the legitimately relevant issues raised by AT&T's complaint. Even if Qwest's requests are remotely relevant, they are frequently unduly burdensome, and in many instances imposed solely for the purpose of imposing burden and harassment.

Generally, Qwest's requests concern two broad topics: (1) interconnection related matters, and (2) the corporate make up of AT&T. Neither of these matters is relevant.

A. AT&T's Complaint Is Pursuant To Utah Code §§ 54-4-13 and 54-3-1, And 47 U.S.C. § 224, Not An Interconnection Agreement

AT&T's complaint seeks relief from unlawful conduit rates imposed by Qwest for many years. The grounds upon which AT&T seeks relief are Utah Code Section 54-4-13 and, to the extent applicable, 47 U.S.C. § 224. Pursuant to the Utah statute, which is the state analog of Section 224 of the federal Communications Act, 47 U.S.C. § 224, Qwest is limited to imposing "reasonable" rental rates for occupancy of conduits by public utilities, such as telecommunications providers. Utah Code § 54-4-13. Given that Qwest has admitted that the rates set forth in its SGAT for occupancy of conduit are "reasonable," rather than undertake a separate conduit rate calculation proceeding, AT&T has identified those SGAT rates as acceptable proxies for the just and reasonable rates required under Utah Section 54-4-13. The fact that AT&T has pointed to Qwest's SGAT rate as a proxy does not change the fact that AT&T's complaint seeks relief under Section 54-4-13. *This case is NOT a dispute over an interconnection agreement.* And the mere fact that AT&T appended a copy of the interconnection agreement to its Complaint, *in order to submit the SGAT*, does not open the entire interconnection agreement to discovery. The interconnection agreement between Qwest and AT&T is absolutely irrelevant to the issue of whether Qwest's conduit rates imposed on AT&T are lawful under Sections 54-4-13 and 54-3-1.

Similarly, the regulatory status of AT&T Corp. and AT&T Communications of the Mountain States as a CLEC, IXC, or otherwise is also wholly irrelevant. The category of telecommunications services provided does not matter. Section 54-4-13 requires Qwest to charge lawful rates to all public utilities. Yet, Qwest's discovery requests almost exclusively seek information as if this were an interconnection agreement dispute.

B. There Is No Legitimate Issue Regarding The Corporate Structure Of AT&T Or Regarding Which AT&T Entity Is The Proper Party To The Conduit Agreement

In its answer, Qwest asserts that it is somehow shocked and surprised that AT&T Corp. and AT&T Communications of the Mountain States, Inc. are the entities bringing this action. Qwest would have the Commission believe that Qwest all along has thought that American Telephone and Telegraph Company has been the entity occupying its conduit for all these years because it is the party named on the face of the April 10, 1987 “General License Agreement For Conduit Occupancy” (“Conduit License Agreement”; Complaint Exh. 4). Indeed, at least half of Qwest’s discovery requests seek information related to the proposition that it needs information regarding AT&T corporate structure to understand who the proper party is. Qwest’s assertion is patently meritless, as demonstrated by the documents submitted with AT&T’s Complaint, on their face.

Exhibit 5 to the Complaint contains two agreements between AT&T and Qwest that on their face establish that Qwest’s assertions in its answer, and in support of its discovery, are meritless. First, there is an “Agreement” between “The Mountain States Telephone and Telegraph Company”¹ and “AT&T Communications of the Mountain States, Inc.” regarding the use of Qwest conduit in Salt Lake City.

The first paragraph of the agreement defines “AT&T Communications of the Mountain States, Inc.” as (“AT&T” or “Licensee”).” The very first “Witneseth” paragraph then states that

WHEREAS, Mountain Bell and *AT&T* [defined term for AT&T Communications of the Mountain States, Inc.] have entered into an agreement for conduit occupancy in certain

¹ Qwest’s approach with this would be like AT&T asking who this “Qwest Corp.” is that has been billing it for conduit occupancy.

portions of Utah, dated April 10, 1987 [*i.e.*, the Conduit License Agreement]. . . .” (emphasis added).

Thus, the document establishes, conclusively, that by at least July 7, 1987, *just three months after the parties entered into the Conduit License Agreement* that is at issue here, Qwest understood that AT&T Communications of the Mountain States, Inc. was a party to the Conduit License Agreement and was occupying Qwest’s conduit, despite the fact that American Telephone and Telegraph is the party named on the face of the Conduit License Agreement.

Similarly, Exhibit 5 contains a second document entitled “Franchise Use Agreement,” which is dated March 22, 1988 and which states that it is “by and between THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY . . . and AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.” The Franchise Use Agreement similarly defines “AT&T COMMUNICATIONS OF THE MOUNTAIN STATES” as “(“**AT&T**” or “Licensee”).” (Emphasis added). Like the 1987 agreement, this “Franchise Use Agreement” also states in its first WHEREAS paragraph that “Mountain Bell and **AT&T** have entered into an agreement for conduit occupancy in certain portions of Utah dated Apr. 10, 1987. . . .” (Emphasis added). Again, the document on its face constitutes an admission and recognition by Qwest that AT&T Communications of the Mountain States, Inc. is a proper party to the Conduit License Agreement and that Qwest has known all along that AT&T Communications of the Mountain States was occupying Qwest’s conduit.

In other words, Qwest has known for decades that AT&T Communications of the Mountain States, and not “American Telephone and Telegraph Company” occupies the conduit in Utah and is a proper and legitimate party to the Conduit License Agreement. Moreover, Qwest’s own pleadings in other actions against AT&T demonstrate that it *currently* has full and

complete knowledge regarding the corporate status of AT&T's entities. (Complaint in *Qwest Corporation v. AT&T Corp.*, Civ. Action No. 04-CV-909, ¶ 6 (D. Colo. filed May 5, 2004)).

Qwest's assertions that it needs discovery to determine who is occupying the conduit and who is a proper party to the Conduit License Agreement are meritless red herrings. Qwest's mock cries of shock and outrage over the fact that American Telephone and Telegraph, while the original named party to the conduit agreement, is not now the entity owning the facilities located in the conduit are a smoke screen, meant to divert attention away from the only real issue in the case—whether Qwest's conduit rates charged to AT&T are lawful under Section 54-4-13.

A patently meritless issue is not grounds to allow a broad fishing expedition. *See, e.g., Surles v. Air France*, No. 00 Civ. 5004, 2001 U.S. Dist. LEXIS 10048 at *11-12, 2001 WL 815522, at *4 (S.D.N.Y. July 19, 2001) (explaining that courts do not grant discovery requests that would allow “fishing expeditions” or that are based on speculation or conjecture). Discovery is permissible only on legitimate issues. *Id.* A defendant cannot state facially untenable defenses and then seek discovery by claiming its relevant to the clearly meritless “defense.” Yet, that is precisely what Qwest is doing. The issues raised by Qwest are not legitimate issues and thus Qwest's Data Requests numbers 7, 11, 14, 17, 19, 21, and 25 are not appropriate. No answer should be compelled.

C. AT&T Has Provided Qwest With All Necessary Relevant Information In Response To Its Data Requests

Notwithstanding the fact that the overwhelming majority of Qwest's discovery is directed at matters that, on the face of the Complaint and its attachments, are not legitimately relevant to this case, AT&T has answered Qwest's requests so as to provide it all of the legitimate information it seeks. The following are examples of the information provided by AT&T, notwithstanding its objections:

- Data Request 2(a) – “on April 20, 1994, the “American Telephone and Telegraph Company” formally amended its Certificate of Incorporation with the State of New York, changing its name to “AT&T Corp.””
- Data Request 2(c) – AT&T provided a copy of the amendment to the American Telephone and Telegraph Company’s Certificate of Incorporation.
- Data Request 3 – “because The American Telephone and Telegraph Company ceased to exist in 1994, that entity is not participating in this docket under that name.”
- Data Request 5 – “AT&T Communications of the Mountain States, Inc. has received certification from the Public Service Commission of Utah to provide long distance and local exchange telecommunication services in Utah.”
- Data Request 6(g) – “AT&T Corp. currently maintains employees in New York, New Jersey, and Georgia, among numerous other states.”
- Data Request 7(a) – “AT&T Communications of the Mountain States, Inc. was incorporated on September 21, 1983 in the State of Colorado.”
- Data Request 7(c) – “AT&T Communications of the Mountain States, Inc. provides telecommunications services directly to customers in Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming.”
- Data Request 7(e) – “AT&T Communications of the Mountain States, Inc. is a wholly-owned subsidiary of AT&T Corp.”
- Data Request 7(f) – “AT&T Communications of the Mountain States, Inc. was formed prior to the Bell System divestiture by Qwest’s predecessor, U S WEST, which transferred to AT&T Communications of the Mountain States, Inc. assets of U S WEST’s local exchange carrier affiliate that predominantly provided interexchange functions. *See* Plan of Reorganization dated December 16, 1982 in *U. S. v. Western Electric Co.*, Civil Action No. 82-0192 (D.D.C.) at 442. On the divestiture date, January 1, 1984, ownership of AT&T Communications of the Mountain States, Inc. was transferred from US WEST to The American Telephone and Telegraph Co.”

Accordingly, AT&T has provided Qwest ample information, albeit irrelevant. Given the repetitive nature of Qwest’s discovery (asking the same questions repeatedly about each AT&T entity) there is no need for additional answers to be compelled. All of the relevant information necessary for Qwest to litigate this case is in its possession.²

² This is particularly true given that the parties have been engaged in nearly identical litigation before the FCC, where Qwest first attempted to make mountains out of the AT&T corporate structure mole hill.

D. Request-By-Request Analysis

The following is a request-by-request analysis of the requests to which AT&T objected on grounds that they exceeded 25 interrogatories. These requests are the subject of Qwest's motion. The analysis demonstrates as for each discovery request that, as discussed above, Qwest's requests exceed the scope of legitimate discovery and AT&T should not be compelled to respond to them. Where efficient, AT&T has grouped related questions and addressed them in a single discussion. In addition, AT&T has bolded pertinent portions of Qwest's requests, so as to assist the Commission's review.

Interrogatory 26 [Qwest Data Request No. 7(g)]: Does [AT&T Communications of the Mountain States, Inc.] currently **maintain any employees in New York, New Jersey, or Georgia**? If so, identify **how many employees and describe their job functions**.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, Claimants object that the request is overly broad and unduly burdensome in seeking information concerning thousands of employees and descriptions of their individual job functions and in states outside of Utah.

Interrogatory 27 [Qwest Data Request No. 7(h)]: Has [AT&T Communications of the Mountain States, Inc.] **maintained employees in New York, New Jersey, or Georgia in the past**? If so, **what types of job functions has it maintained for employees in those states**?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, Claimants object that the request is overly broad and unduly burdensome in seeking information concerning thousands of employees and descriptions of their individual job functions and in states outside of Utah.

Interrogatory 28 [Qwest Data Request No. 7(i)]: Does [AT&T Communications of the Mountain States, Inc.] **maintain employees at 55 Corporate DR RM 21C70, Bridgewater, NJ 08807**? If so, **what functions do those employees fulfill at that location**? If not, **which AT&T entity maintains employees at that location**?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, Claimants object that the request is overly broad and unduly burdensome in seeking information concerning numerous employees and descriptions of their individual job functions and in states outside of Utah.

Discussion: These are classic examples of the overreaching of Qwest's discovery.

AT&T cannot imagine how the location of its employees in various states, their number and their job descriptions is even remotely relevant to the issue of whether Qwest's conduit rates are lawful under Section 54-4-13.

Presumably, Qwest will assert that these questions relate to the fact that Qwest sends its invoices to AT&T at offices in New Jersey and Georgia (*see, e.g.*, Complaint Exhibit 7). That fact, however, still does not explain how the information sought is relevant to the claims in the case. The particulars of where AT&T has its bills sent are of no consequence.

In addition, even if there were some remote relevance, it is outweighed by the burden to AT&T of having to obtain such information and provide such descriptions as to potentially thousands of employees.

Interrogatory 29 [Qwest Data Request No. 8]: Is the Complainant AT&T Communications of the Mountain States, Inc. the **same corporate entity as the company by the same name that is referred to in Exhibits 1 and 2** of the Complaint? If not, please explain how the corporate entity or entities identified in Exhibits 1 and 2 differ from the entity by that same name that is a complainant in this case.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 30 [Qwest Data Request No. 9]: The last two documents included in Exhibit 5 of the Complaint refer to AT&T Communications of the Mountain States, Inc. The first is entitled "Agreement," and is dated July 7, 1987; the second is entitled "Franchise Use Agreement" and is dated March 22, 1988. **Is the Complainant AT&T Communications of the Mountain States, Inc. the same corporate entity as the**

company by the same name as referred to in these two agreements? If not, please explain how the corporate entities identified in these documents in Exhibit 5 differ from the entity by that same name that is a complainant in this case.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 31 [Qwest Data Request No. 10]: Is the entity referred to as "AT&T Communications of the Mountain States, Inc." in the interconnection agreement attached as Exhibit 6 to the Complaint **the same legal entity as the complainant by the same name?** If not, please **explain how the corporate entities identified in these documents in the interconnection agreement differ from the entity by that same name that is a complainant in this case.**

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: Other than for the purpose of harassment and burden, Qwest's Data Requests 8-10 are baffling. It is unclear what purpose Qwest sought to achieve by these requests for confirmation of the patently obvious. In addition, to the extent Data Request No. 10 seeks information regarding the interconnection agreement, as discussed above, the corporate details of the AT&T entity that is a party to the interconnection agreement are irrelevant.

Interrogatory 32 [Qwest Data Request No. 11]: Does AT&T Corp. **maintain offices at 55 Corporate DR RM 21C70, Bridgewater, NJ 08807?** If so, **what functions do its employees at that location perform?** If not, **identify the AT&T entity that maintains employees at that address and describe the functions they perform?**

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, Claimants object that the request is overly broad and unduly burdensome in seeking information concerning numerous employees and descriptions of their individual job functions and in states outside of Utah.

Discussion: This request is flawed in the same manner as Qwest Data Requests 7(g)-7(i), above. Whether AT&T Corp. has offices at that address in New Jersey has no relevance whatsoever to the question of whether Qwest's conduit rates comply with Section 54-4-13. Moreover, the functions performed by all of the AT&T employees located at that address is even more irrelevant. And like above, even if Qwest were to demonstrate some remote relevance, it would be outweighed by the burden to AT&T of responding to these questions.

Interrogatory 33 [Qwest Data Request No. 12]: Explain complainants understanding of the reference to "GRE Lease Admin" as used in the documents attached to Exhibit 7 of the Complaint?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 34 [Qwest Data Request No. 13]: With regard to paragraph 1 of the complaint, **does AT&T Corp. directly provide any telecommunications services in the State of Utah** or has it ever in the past?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 35 [Qwest Data Request No. 13(a)]: If so, **what services does it currently provide?**

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 36 [Qwest Data Request No. 13(b)]: **What services did it formerly provide in Utah** that it no longer provides?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 37 [Qwest Data Request No. 13(c)]: Is AT&T Corp. certificated to provide services in Utah? If so, provide copies of its certification by the Utah Public Service Commission.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 38 [Qwest Data Request No. 13(d)]: Is AT&T Corp. a CLEC in Utah?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: As discussed above, Section 54-4-13 requires Qwest to charge “public utilit[ies],” like AT&T, reasonable rates for conduit occupancy. The specific kinds of telecommunications services provided in the State of Utah and whether provided “directly” is not relevant to the fact that Sections 54-4-13 and 54-3-1 apply. Moreover, an historic listing of the services provided and discontinued is wholly irrelevant and overreaching. Similarly, AT&T Corp.’s status as a CLEC is not relevant to the application of Section 54-4-13 or 54-3-1.

This line of questions is part of Qwest’s assertion that AT&T’s complaint raises issues concerning the application of the interconnection agreement and Qwest’s duties thereunder. AT&T’s Complaint does not. As explained above, AT&T’s claims do not invoke the interconnection agreement, *per se*, but only refer to the SGAT rates attached thereto for purposes of a convenient proxy for lawful conduit rates under Section 54-4-13.

In addition, the request is ultimately ambiguous, as it is unclear what is meant by “directly provide telecommunications services. . . .” (*i.e.*, is the question whether AT&T Corp. serves end user subscribers? or is it whether it provides service through an affiliate?).

Supplemental Answer to Data Request 12: Subject to and without waiving its objections, AT&T states that “GRE Lease Admin,” as used on an invoice from Qwest to AT&T

in Exhibit 7, refers to “Global Real Estate” Lease Administration, which is a department of AT&T Corp. that deals with leases and payments for leases entered into by AT&T Corp. and its subsidiaries.

Interrogatory 39 [Qwest Data Request No. 13(e)]: Provide a copy of all interconnection agreements between AT&T Corp. and Qwest in Utah.

Claimants’ Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Claimants further object that this request seeks information that is already fully within the possession of Qwest and is therefore imposed solely for the purpose of harassment.

Discussion: As discussed above, the existence of interconnection agreements between AT&T Corp. and Qwest in Utah is not relevant. AT&T’s complaint does not state a claim pursuant to the terms of an interconnection agreement, but rather, merely points to the SGAT rates for conduit attached to the interconnection agreement as an indicator of a just and reasonable rate that would satisfy Section 54-4-14. In addition, this request, like many of Qwest’s requests, seeks documents that are already in Qwest’s possession.

Interrogatory 40 [Qwest Data Request No. 14]: Does the American Telephone and Telegraph Company directly provide any telecommunications services in the State of Utah or has it ever in the past?

Claimants’ Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it is overly broad to the extent that it seeks information that is not relevant to substantial issues in the proceeding and vague, ambiguous, and unduly burdensome in seeking information concerning past telecommunications service offerings, without limit to time or scope. Further, Claimants object to this interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 41 [Qwest Data Request No. 14(a)]: If so, what services does it currently provide?

Claimants’ Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this

interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 42 [Qwest Data Request No. 14(b)]: What services did it formerly provide in Utah that it no longer provides?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Further, the request is vague, ambiguous, and unduly burdensome in seeking information concerning past telecommunications service offerings, without limit to time or scope.

Interrogatory 43 [Qwest Data Request No. 14(c)]: Is the American Telephone and Telegraph Company certificated to provide services in Utah? If so, provide copies of its certification by the Utah Public Service Commission.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 44 [Qwest Data Request No. 14(d)]: Is the American Telephone and Telegraph Company a CLEC in Utah?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 45 [Qwest Data Request No. 14(e)]: Provide a copy of all interconnection agreements between the American Telephone and Telegraph Company and Qwest in Utah.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: This series of requests is identical to those set forth in request 13, as discussed above. As such, they suffer from the same defects as set forth above. These requests

are a part of Qwest's professions of shock and surprise to learn that American Telephone and Telegraph is not the entity currently owning facilities in the conduit. As demonstrated fully in Section III.B., above, this position is meritless.

Interrogatory 46 [Qwest Data Request No. 15]: With regard to paragraph 1 of the complaint, **identify the specific services that AT&T Communications of the Mountain States, Inc. provides in the State of Utah?**

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: While this request references a specific allegation in the complaint, it does not seek relevant information. There is no question that AT&T Communications of the Mountain States has received a certificate of public convenience and necessity from the Commission (Complaint Exhibits 1&2) and provides telecommunications services in Utah, and as such is a "public utility" as defined under Section 54-4-13. A description of the "specific services" that it provides, however, is unnecessary and irrelevant. The fact that it has received a CPCN and provides telecommunications services is all that is relevant to establish that Qwest is bound by the limitations of Section 54-4-13. Indeed, there is every reason to believe that this request was proffered solely for purposes of seeking information for Qwest to use in its competition with AT&T Communications of the Mountain States.

Interrogatory 47 [Qwest Data Request No. 16]: With regard to paragraph 5 of the complaint, do any other affiliates of the Complainants—e.g., TCG Utah—occupy the conduit at issue in this case? If so, identify each affiliated company and identify the portions of conduit in Utah that each affiliate uses.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Supplemental Response: Subject to and without waiving its objections, to the best of its knowledge, no other affiliates of the Complainants occupy the conduit at issue in this case.

Interrogatory 48 [Qwest Data Request No. 17]: Based on the documentation in Exhibit 6 to the Complaint, there are three major conduits that are occupied by complainants and any other AT&T entities in Utah: (1) Salt Lake City to Salt Lake Junction (87-1); (2) Salt Lake City Main to Brigham City (87-2); and (3) Salt Lake City Main to Provo Main (87-3). With regard to each section of conduit occupied by an AT&T entity in Utah, identify which AT&T entities currently occupies the conduit with (1) their own facilities for their own use or (2) their own facilities for the use of another AT&T entity.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: The issue of which specific entity occupies a specific stretch of conduit is not at issue in this case. AT&T does not challenge the length of conduit that Qwest is identifying in its invoices. Nor is there a claim that Qwest is billing the wrong entity. Moreover, as discussed in detail in Section III.B., above, Qwest cannot legitimately make a claim that it does not know what AT&T entity is using the conduit. Yet, Qwest seems to be taking the approach that it can use this discovery to fish for information about AT&T's facilities. Qwest has made no claim of unauthorized use by AT&T, and thus this fishing expedition is inappropriate.

Interrogatory 49 [Qwest Data Request No. 18]: In addition to the conduits specifically identified in data request no. 17 [Interrogatory 48, *supra*], are there any other conduits that are occupied by complainants and any other AT&T entities in Utah? If so, identify the conduits, the footage occupied, and identify which AT&T entities occupy them.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Finally, Claimants object that this interrogatory is vague and ambiguous.

Discussion: Like request 17 above, the relevancy of this request is unclear. There is no issue in this case about the amount of conduit being used, nor is the specific location of the conduit of any import to whether Qwest's rates are lawful. Moreover, this is information that is within Qwest's knowledge and control. Its own records will reveal where any AT&T entity is leasing conduit (and as discussed above, Qwest knows very well the corporate relationship of various AT&T entities and subsidiaries).

Interrogatory 50 [Qwest Data Request No. 19(a)]: As to each section of conduit identified in data requests 17 [Interrogatory 48, *supra*] and 18 [Interrogatory 49, *supra*], provide the following historical and current information: Which AT&T entities originally occupied the conduit after execution of the applicable license.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 51 [Qwest Data Request No. 19(b)]: As to each section of conduit identified in data requests 17 and 18, provide the following historical and current information: The date on which another AT&T entity began to occupy some or all of the conduit.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 52 [Qwest Data Request No. 19(c)]: As to each section of conduit identified in data requests 17 and 18, provide the following historical and current information: In those cases when another AT&T entity occupied the conduit in addition to The American Telephone & Telegraph Company, did that other entity place new facilities or take over (either by lease, purchase or otherwise) the facilities originally placed in the conduit. Identify all AT&T entities that subsequently occupied any of the Utah conduit.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 53 [Qwest Data Request No. 19(d)]: As to each section of conduit identified in data requests 17 [Interrogatory 48, *supra*] and 18 [Interrogatory 49, *supra*], provide the following historical and current information: Which AT&T entities (including AT&T entities not a complainant in this case) currently occupy the conduit and in what amounts.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 54 [Qwest Data Request No. 19(e)]: As to each section of conduit identified in data requests 17 [Interrogatory 48, *supra*] and 18 [Interrogatory 49, *supra*], provide the following historical and current information: To the extent an AT&T entity other than The American Telephone and Telegraph Company occupies any of those conduits, state the date upon which notice was provided to Qwest or its predecessors notifying Qwest of the intention that another AT&T entity occupy the conduit. Provide copies of all such notices and any written replies by Qwest or its predecessors. Describe any oral conversations (including date and participants) that complainants assert occurred between them and Qwest with regard to the use of the conduit by any entity other than The American Telephone and Telegraph Company.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: This series of questions appears to relate to Qwest's suggestion that it does not know who is occupying the conduit and that there has been some clandestine action by AT&T. As demonstrated in detail in Section III.B., above, Qwest's assertion that it does not know who is occupying the conduit, and its suggestion that AT&T Communications of the Mountain States is not a proper party under the Conduit License Agreement are meritless. This is a fishing expedition with no relation to this case. Moreover, the case does not go back to the original occupation of conduit, and thus, Qwest's questions seeking a historical timeline of occupation are irrelevant.

Interrogatory 55 [Qwest Data Request No. 20]: Has AT&T Communications of the Mountain States, Inc. ever ordered conduit from Qwest pursuant to an interconnection

agreement between it and Qwest (or a Qwest predecessor) in Utah? If so, state the date of each order, provide a specific description of the conduit ordered, and provide a written copy of the order.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: As discussed above, this case is not about a claim against Qwest under an interconnection agreement. AT&T Communications of the Mountain States is not required to have ordered conduit from Qwest pursuant to an interconnection agreement in order for the terms of Section 54-4-13 to apply to Qwest's charges for conduit. Accordingly, whether AT&T Communications of the Mountain States has ever made a request under an interconnection agreement is irrelevant.

Interrogatory 56 [Qwest Data Request No. 21]: With regard to Article 18— Assignment of Rights (attached as Exhibit 4-page 11 to the Complaint), provide copies of all requests for assignment made by The American Telephone and Telegraph Company, AT&T Corp., or any other AT&T affiliated entity to allow AT&T Communications of the Mountain States, Inc. or any other AT&T affiliate to use the conduit pursuant to the General License Agreement.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. Claimants also object that this request assumes a conclusion of law, specifically, that such a request for assignment was required. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: Like Qwest's requests above, this request is far afield of the claims in the complaint. AT&T challenges Qwest's conduit rates under statute. Despite its mock cries of shock and outrage, Qwest has made no allegation of a breach of the conduit agreement by AT&T. And as discussed above in Section III.B., Qwest cannot make such a claim. It has known since the time the Conduit License Agreement was executed that AT&T Communications of the Mountain States uses the conduit and is a party to the Conduit License Agreement. Yet,

contrary to the clear evidence discussed in Section III.B., above, this response assumes that AT&T was required to request Qwest's approval for some alleged assignment, as if this were a case involving Qwest suing AT&T for breach or unauthorized occupancy. There is no good faith basis for Qwest's assertions or this discovery request.

Interrogatory 57 [Qwest Data Request No. 22]: What portion of the conduit occupied by AT&T Corp, AT&T Communications of the Mountain States, or any other AT&T entity is within the city limits of the Salt Lake City?

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. Claimants object that this request is duplicative of Interrogatory 48 [data request no. 17]. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: There is no relevance to the information sought by this request. Whether or not AT&T occupies conduit located in Salt Lake City has no impact on the rates charged by Qwest under Section 54-4-13. The location of the conduit does not come into play. The only possible explanation for this fishing expedition is that Qwest is seeking information for competitive purposes.

Interrogatory 58 [Qwest Data Request No. 23]: With regard to paragraph 19 of the complaint, provide a specific description of the efforts of complainants or any other AT&T entity to renegotiate conduit rental rates with Qwest in Utah. In that regard, please describe what specifically happened in February 2000? Provide copies of all documents in the possession of complainants relating to the attempted negotiations described in paragraph 19 of the complaint.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories.

Supplemental Response: Subject to and without waiving its objections, AT&T refers Qwest to AT&T's response to the DPU's interrogatory number 5, as set forth in Claimants' Response to DPU Data Request #1 For AT&T Corp. And AT&T Communications of the

Mountain States, Inc. AT&T Corp. incorporates its response to DPU Data Request number 5 herein. A copy of Claimants' Response was served on Qwest on October 12, 2004.

Interrogatory 59 [Qwest Data Request No. 24]: In its Prayer for Relief, subparagraph c., the complainants seek recovery back to July 9, 1998, a date that is described as "when Qwest committed to providing AT&T with non-discriminatory rates." Describe in detail the act that Qwest allegedly committed on July 9, 1998 that allegedly resulted in Qwest's commitment to provide non-discriminatory rates. Provide all documents in complainants' possession that support that claim.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories.

Supplemental Response: Subject to and without waiving its objections, AT&T refers Qwest to AT&T's response to the DPU's interrogatory number 6 as set forth in Claimants' Response to DPU Data Request #1 For AT&T Corp. and AT&T Communications of the Mountain States, Inc. AT&T Corp. incorporates its response to DPU Data Request number 6 herein.

Interrogatory 60 [Qwest Data Request No. 25]: In the documents attached as Exhibit 5 to the Complaint is a single-page document entitled "Appendix 1 Form A-6" relating to the surrender of 7,599 feet of conduit located in Provo, Utah. With regard to that document, please state the name of the AT&T entity by whom Mr. Albert Uchaker was employed on August 27, 2003, provide Mr. Uchaker's business address on August 27, 2003, describe Mr. Uchaker's duties on that date, and state whether he is still an employee of an AT&T entity. If Mr. Uchaker is no longer employed by an AT&T entity, please provide his current home address and telephone number.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. In addition, Claimants object to this interrogatory on the grounds that it seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the request is overly broad and unduly burdensome.

Discussion: The grounds for this request are a mystery. The name of the AT&T entity that employed the gentleman that signed a surrender of conduit is irrelevant. There is no question about the accuracy of the length of conduit, and even if there were, this discovery request would not expose any relevant facts on that issue. Rather, this appears to be a question,

perhaps, going to Qwest's assertions that it needs to know which AT&T entity is occupying the conduit. Yet, as demonstrated above, Qwest's attempt to create an issue about AT&T Communications of the Mountain States' use under the Conduit License Agreement has been debunked by Qwest's own agreements. In any event, the information sought, for example, Mr. Uchaker's duties and current whereabouts are wholly irrelevant and unduly burdensome.

Interrogatory 61 [Qwest Data Request No. 26]: Provide all documents in complainants' possession that support a claim that Qwest has denied AT&T Communications of the Mountain States, Inc. access to conduit under interconnection agreement between the two companies, including any documentation that Qwest has denied orders made by AT&T Communications of the Mountain States, Inc., to Qwest for such conduit pursuant to the interconnection agreements between AT&T Communications of the Mountain States, Inc. and Qwest.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories. Claimants further object to this request on the grounds that it is based on a misstatement of, or incorrect assumption regarding, Claimants' claims. In addition, Claimants object that the request seeks information that is not relevant to substantial issues in the proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion: As discussed above, AT&T's complaint does not allege a breach of an interconnection agreement obligation. Thus, whether AT&T Communications of the Mountain States has made orders under an interconnection agreement, and whether Qwest has denied access under an interconnection agreement are irrelevant. AT&T need not have made any such order pursuant to an interconnection agreement in order for the statutory requirements of Section 54-4-13 to apply to Qwest's conduit rental rates.

Interrogatory 62 [Qwest Data Request No. 27]: With regard to complainant's request for attorneys' fees (Prayer for Relief, subparagraph d), identify (1) all contractual provisions upon which complainants rely for such relief and (2) all statutory provisions upon which complainants rely for such relief.

Claimants' Response: Claimants object to this interrogatory on the grounds that it exceeds the permitted number of interrogatories.

Supplemental Response: Subject to and without waiving its objections, AT&T states that Article 21(A) of the Conduit License Agreement (Complaint Exhibit 4) provides that the prevailing party in an action brought pursuant to the terms of the agreement shall be entitled to recover any and all reasonable attorneys' fees. Article 21(B) provides that the agreement shall be construed in accordance with the laws of the Utah.

IV. CONCLUSION

As the foregoing demonstrates, even setting aside the issue regarding Qwest's excessive number of interrogatories, there is no basis for granting Qwest's motion to compel. Qwest's interrogatories seek information regarding legally irrelevant issues. Moreover, AT&T has nonetheless answered enough of Qwest's requests to provide Qwest the information it needs to prosecute this case, including submission and response to motions for summary judgment. Accordingly, AT&T respectfully submits that Qwest's motion should be denied.

DATED this 29th day of October, 2004.

**AT&T CORP. AND AT&T COMMUNICATIONS OF
THE MOUNTAIN STATES, INC.**

Jerold G. Oldroyd, Esq.
Angela W. Adams, Esq.
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221

Richard Wolters, Esq.
Meredith R. Harris, Esq.
AT&T CORP.
One AT&T Way
Bedminster, New Jersey 07921

J. Davidson Thomas, Esq.
T. Scott Thompson, Esq.
Brian M. Josef, Esq.
COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Ave., N.W.
Second Floor
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2004, I caused a true and correct copy of Claimants' Opposition To Qwest's Motion To Compel to be sent by electronic mail and by U.S. mail, postage prepaid thereon, to:

Meredith R. Harris, Esq.
AT&T Corp.
One AT&T Way
Bedminster, New Jersey 07921
Telephone: (908) 532-1850
E-Mail: harrism@att.com

Richard S. Wolters, Esq.
AT&T
1875 Lawrence Street, Room 15-03
Denver, Colorado 80202-1847
Telephone: (303) 298-6741
Facsimile: (303) 298-6301
Cell: (303) 570-4070
E-Mail: rwolters@att.com

Donald R. Finch
Manager
AT&T
1875 Lawrence Street, Room 14-44
Denver, Colorado 80202-1847
Telephone: (303) 298-6115
Facsimile: (303) 298-6301
E-Mail: drfinch@att.com

J. Davidson Thomas, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Second Floor
Washington, D.C. 20006
Telephone: (202) 828-9873
Facsimile: (202) 452-0067
E-mail: dthomas@crblaw.com

T. Scott Thompson, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Second Floor
Washington, D.C. 20006
Telephone: (202) 659-9750
E-Mail: sthompson@crblaw.com

Brian M. Josef, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Second Floor
Washington, D.C. 20006
Telephone: (202) 828-9874
Cell: (301) 233-2317
E-Mail: bjosef@crblaw.com

Genevieve D. Sapir, Esq.
Cole, Raywid & Braverman, LLP
2381 Rosecrans Avenue, Suite 110
El Segundo, California 90245
Telephone: (310) 643-7999 ext. 107
Cell Phone: (310) 927-4795
E-mail: gsapir@crblaw.com

Gregory B. Monson, Esq.
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999
E-Mail: gmonson@stoel.com

Ted D. Smith, Esq.
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999
E-Mail: tsmith@stoel.com

Michael Ginsberg, Esq.
Assistant Attorney General
Heber M. Wells Building, Fifth Floor
160 East 300 South
Salt Lake City, Utah 84111
Telephone: (801) 366-0353
E-Mail: mginsberg@utah.gov

Patricia E. Schmid, Esq.
Assistant Attorney General
Heber M. Wells Building, Fifth Floor
160 East 300 South
Salt Lake City, Utah 84111
Telephone: (801) 366-0353
E-Mail: pschmid@utah.gov

Peggy Egbert
STATE OF UTAH
Department of Commerce
Division of Public Utilities
Heber M. Wells Building, Fourth Floor
160 East 300 South
Salt Lake City, Utah 84114
Telephone: (801) 530-6793
E-Mail: peggyegbert@utah.gov

Dennis Miller
STATE OF UTAH
Department of Commerce
Division of Public Utilities
Heber M. Wells Building, Fourth Floor
160 East 300 South
Salt Lake City, Utah 84114
Telephone: (801) 530-6657
E-Mail: dennismiller@utah.gov

Robert C. Brown, Esq.
Qwest Services Corp.
1801 California Street, Suite 4900
Denver, Colorado 80202
robert.brown@qwest.com

