



AT&T Corp., and AT&T Communications of the Mountain States, Inc. (collectively “AT&T”), by and through their attorneys, Ballard, Spahr, Andrews and Ingersoll, LLP hereby complain against Qwest Corporation (“Qwest”), as follows:

### **PARTIES**

1. Claimant AT&T Corp. provides telecommunications services in the State of Utah and other states by and through its affiliate AT&T Communications of the Mountain States, Inc. The Public Service Commission of Utah has granted AT&T certification to provide long distance and local exchange telecommunication service in Utah. AT&T’s principal place of business is One AT&T Way, Bedminster, New Jersey 07921. Copies of AT&T’s PSC certifications are attached hereto as Exhibits 1 and 2.

2. Respondent Qwest is a certified provider of long distance and local exchange telecommunications services in the State of Utah and other states. Qwest’s principal place of business is 1801 California Street, Denver, Colorado 80202.

### **JURISDICTION AND VENUE**

3. Jurisdiction over this dispute is properly held by the Commission pursuant to Utah Code Ann. §§ 54-1-2.5, 54-4-1, 54-4-13, and 63-46b-1, *et. seq.* The State of Utah has certified to the Federal Communications Commission that it regulates the rates, terms and conditions for pole attachments, which includes conduits. *See Public Notice, States That Have Certified That They Regulate Pole Attachments*, 7 FCC Rcd. 1498 (1992), attached hereto as Exhibit 3; Utah Code § 54-4-13; *Utah Cable Television Operators Ass’n v. Public Serv. Comm’n of Utah*, 656 P.2d 398, 403 (Utah 1982).

4. Qwest is a certified long distance and local exchange carrier that owns or controls conduit in the State of Utah and elsewhere. Such conduits are used for purposes of wire communications.

5. AT&T owns communications facilities that occupy Qwest's conduit.

6. Qwest and AT&T are direct competitors in local and long distance telecommunications service.

7. AT&T has the right of access to Qwest conduit under just, reasonable and non-discriminatory rates, terms and conditions. *See* 47 U.S.C. § 224; Utah Code § 54-4-13.

8. AT&T occupies Qwest-owned conduit in Utah pursuant to the "General License Agreement for Conduit Occupancy Between The Mountain States Telephone and Telegraph Company and The American Telephone and Telegraph Company for the State of Utah, dated April 10, 1987" ("Conduit License Agreement") and Licenses executed pursuant thereto. *See* Conduit License Agreement attached hereto as Exhibit 4; Licenses attached hereto as Exhibit 5.

9. AT&T also occupies Qwest-owned conduit pursuant to an "Agreement for Local Wireline Network Interconnection and Service Resale" ("Interconnection Agreement") executed between AT&T and Qwest's predecessor, U S West, and approved by the Commission on June 9, 1998.<sup>1</sup> *See* Interconnection Agreement attached hereto as Exhibit 6. *See also Interconnection Contract Negotiations Between AT&T of the Mountain States and U S West Communications*, Order on Reconsideration, Docket No. 96-095-01 (June 9, 1998).

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<sup>1</sup> Qwest and AT&T are currently arbitrating a new interconnection agreement before the Utah Public Service Commission. *See Petition of Qwest Corporation For Arbitration Of Interconnection Rates, Terms, Conditions, And Related Arrangements With AT&T Communications of the Mountain States, Inc. and TCG Utah*, Arbitration Report and Order, Docket No. 04-049-09 (May 20, 2004).

## GENERAL ALLEGATIONS

10. AT&T currently occupies approximately 604,674 feet of Qwest's conduit in the State of Utah. Until May 2002, AT&T occupied an additional 7,599 feet of Qwest's conduit. *See* Qwest Conduit Licenses, attached hereto as Exhibit 5; Qwest Conduit Invoices, attached hereto as Exhibit 7.

11. The Conduit License Agreement does not establish rates. Rather, the individual Licenses, issued pursuant to the Agreement, set forth the rates. *See* Qwest Conduit Licenses (Ex. 5).

12. Similarly, the Interconnection Agreement between the parties does not set forth a specific rate for conduit rental. Instead, the Agreement requires Qwest to provide AT&T "equal and non-discriminatory access to poles, ducts, conduit and ROW and any other pathways on terms and conditions equal to that provided by . . . [Qwest] to itself or to any other Person." Interconnection Agreement at § 47.4.5 (Ex. 6).

13. Qwest makes its conduit rental rate publicly available in its Statement of General Available Terms and Conditions ("SGAT") on file at the Utah Public Service Commission. *See* Utah SGAT, attached hereto as Exhibit 8.

14. Qwest represents that the SGAT conduit rate set forth below is calculated based on the FCC's conduit rate formula. *See* Utah SGAT at note 4 (Ex. 8).

15. The conduit rate produced by the FCC's formula—and Qwest's advertised SGAT rate—is a just and reasonable rate consistent with 47 U.S.C. § 224 and Utah Code 54-4-13.

16. Separately, AT&T has explicitly requested this Commission to adopt the FCC's conduit rate formula in order to perfect the Commission's certification over the rates,

terms and conditions of pole attachments. *See* AT&T Initial Comments, Docket No. 04-999-03, dated April 1, 2004.

17. Qwest currently charges AT&T rates ranging from \$2.10 to \$2.98 per foot, per year to occupy its conduit in Utah. *See* Conduit Invoices attached hereto as Exhibit 7.

18. Qwest's publicly available SGAT identifies Qwest's conduit rental rate as \$0.3455. *See* Utah SGAT Spreadsheet § 10.7.12 (Ex. 8). Upon information and belief, this is a just and reasonable rate for conduit occupancy. Although this is the publicly filed rate and approximates levels that AT&T believes would be generated under the FCC's conduit formula, Qwest continues to charge AT&T the higher \$2.10 to \$2.98 per foot rates.

19. Beginning in February, 2000 and continuing through December, 2003, AT&T attempted to re-negotiate Qwest's conduit rental rates to be consistent with the rates that would be produced under the FCC's formula and/or the rates at which Qwest offers conduit to other telecommunications companies. AT&T's attempts have not been successful.

#### **REQUEST FOR AGENCY ACTION**

20. This Commission is charged with ensuring that the rates, terms and conditions of attachment are just and reasonable. *See* Utah Code § 54-4-13; *Utah Cable Television Operators Ass'n v. Public Serv. Comm'n of Utah*, 656 P.2d 398, 403 (Utah 1982); *see also* Utah Code § 54-3-1. In addition, the Commission holds broad authority to supervise and regulate every public utility within the State. Utah Code § 54-4-1; *see also* Utah Code § 54-4-2.

21. Qwest competes directly with AT&T in providing local exchange and long distance telecommunications service in the state of Utah. Qwest has acted unjustly and unreasonably in seeking to gain a competitive advantage in the market by forcing AT&T to pay rates well above the SGAT rate on file with the Commission.

22. Furthermore, Qwest's practice of offering its facilities to other telecommunications carriers at the SGAT rate, while charging AT&T conduit rates in excess of the SGAT rate is discriminatory and prohibited by law. *See* Utah Code Ann. § 54-3-8. It is also part of a pattern of the deceptive and anti-competitive practices that Qwest has engaged in across its multi-state service areas,<sup>2</sup> including, specifically, Utah.

23. Finally, pursuant to 47 U.S.C. § 271, Qwest's authority to provide long-distance telecommunication service in Utah is conditioned on it affording non-discriminatory access for competitors, including non-discriminatory access to its "poles, ducts, conduits and rights-of-way." 47 U.S.C. § 271 (c)(2)(B)(iii). By refusing to provide AT&T, its competitor,

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<sup>2</sup> *See, e.g., In re Qwest Corp Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, FCC 04-57, File No. EB-03-IH-0263 (Mar. 12, 2004) (imposing \$9 million forfeiture and finding that "Qwest's cavalier attitude toward the Act's filing requirements shows a disregard for Congress's goals of opening local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms"); Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications International, Inc. re: Section 271 Compliance Review Program for Arizona (dated Mar. 26, 2004) (establishing Section 271 compliance monitoring program for Qwest and reserving Commission's authority to investigate and monitor other subjects not expressly noted in prior orders or correspondence); Letter from William Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications International, Inc. re: Section 271 Compliance Review Program for Minnesota (dated July 23, 2003) (same); Letter from William Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications International, Inc. re: Section 271 Compliance Review Program for New Mexico, Oregon and South Dakota (dated June 4, 2003) (same). *See also* State Telecom Activities, Communications Daily (Apr. 23, 2004) (announcing Arizona Corporation Commission's assessment of nearly \$21 million in penalties on Qwest for its "willful and intentional" violations of state and federal laws for failing to file interconnection agreements); *In the Matter of the Investigation into Unfiled Agreements Executed by Qwest Corporation*, Docket No. 02I-572T, Colo. PUC (Feb. 27, 2004) (Colorado PUC staff recommending a hearing regarding willful and intentional violations of state and federal law by Qwest); *Order Assessing Penalties*, Docket No. P-421/C-02-197, Minn. PUC, (Feb. 28, 2003) (Minnesota agency ordering Qwest to pay \$26 million fine and engage in steps toward compliance), *Order after Reconsideration on Own Motion*, Minn. Docket No. P-421/C-02-197 (Apr. 30, 2003) and *Order Adopting ALJ's Report and Establishing Comment Period Regarding Remedies*, Minnesota Docket No. P-421/C-02-197, at 5 (Nov. 1, 2002), *Qwest Corporation v. Minnesota Public Utilities Commission, et al., Complaint for Declaratory Judgment and Injunctive Relief to Prevent Enforcement of Public Utilities Commission Orders*, Civ. File No. 03-3476, D. Minn. (filed June 19, 2003) (Qwest complaint challenging PUC's authority to impose penalty); *AT&T Corp. v. Qwest Corp., Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing*, Iowa Utils. Bd. Docket No. FCU-02-2 (June 18, 2002) (finding that Qwest's failure to file interconnection agreements at issue violated Section 252 of the Act).

with conduit at the publicly available SGAT rates, Qwest is not providing non-discriminatory access to its “poles, ducts, conduits and rights-of-way.”

WHEREFORE, in accordance with the Commission’s broad authority to regulate public utilities and protect the public interest, as well as its authority over conduit under state and federal law, AT&T respectfully request this Commission to enter an Order:

a. declaring unlawful Qwest’s Utah conduit rates of \$2.10 to \$2.98 per foot innerduct per year, and terminate the \$2.10 to \$2.98 rates;

b. setting an annual conduit rental rate in Utah calculated in accordance with the FCC formula, or in the alternative, consistent with the SGAT rate of \$0.3455 per foot of duct, whichever is less;

c. ordering Qwest to refund to AT&T all amounts paid in excess of rates charged to other telecommunications carriers dating back to July 9, 1998, when Qwest committed to providing AT&T with non-discriminatory rates;

d. awarding attorneys fees to AT&T dating back to the February, 2000, when AT&T notified Qwest of the discrepancy between the rates that Qwest is currently charging AT&T and the rates Qwest charges other telecommunications carriers;

e. granting AT&T such other relief the Commission deems just, reasonable and proper.

Respectfully submitted this 14<sup>th</sup> day of June, 2004.

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**Attorneys for AT&T Corp. and AT&T  
Communications of the Mountain States, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of June, an original, eight (8) true and correct copies, and an electronic copy of **REQUEST FOR AGENCY ACTION** were hand-delivered to:

Ms. Julie Orchard  
Commission Secretary  
Public Service Commission of Utah  
Heber M. Wells Building, Fourth Floor  
160 East 300 South  
Salt Lake City, Utah 84114  
lmathie@utah.gov

and a true and correct copy mailed, postage prepaid thereon, to:

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