

competing LEC seeking non-discriminatory access in a *worse* position in cases where the utility from which it seeks access has attained *broader* rights of ownership or control from the MTE owner.

Second, this right of access is triggered only when the building owner has already ceded to the utility “own[ership] or control” over the right of way to the utility. *See* 47 U.S.C. § 224(a)(1). Accordingly, there would no concerns about a taking from the building owner because the competitive LEC would be seeking access to property owned or controlled by the utility, not the building owner. Moreover, as to the utility, Section 224 already guarantees just and reasonable compensation. 47 U.S.C. § 224(b)(1); *see Gulf Power I*, 187 F.3d at 1337-38.

AT&T recognizes that the Commission’s current definition of what “right-of-way” means, “at a minimum,” may be sufficient to address the nondiscriminatory access needs of competitive LECs in a majority of cases. The Commission, however, should leave open, for case-by-case adjudication, whether a broader definition of right-of-way is appropriate in specific circumstances to ensure a level playing field between a competitive and incumbent LEC. That “case-specific” analysis would mirror the Commission’s approach for assessing the reasonableness of conditions of access imposed by a utility, *Local Competition Order*, 11 FCC Rcd at 16067-74, ¶¶ 1143-1158 (adopting certain categorical rules but relying on “case-specific” resolution of other issues falling outside those general standards), and could be enforced through the Commission’s pole attachment procedures, *see* 47 C.F.R. §§ 1.1401-18.

V. THE PROPOSAL TO ALLOW TELECOMMUNICATIONS CARRIERS TO ACQUIRE MVPD HOME RUN WIRING WOULD NOT ADVANCE COMPETITION.

The Commission should not extend its rules governing access to cable inside wiring for multi-channel video programming distributors (MVPD) so that providers of telecommunications

services are given similar access rights. *Further Notice*, ¶ 175. This proposal would not advance competition in any market; it would interfere with the operation of the current rules; and there are serious reasons for concern that its effect would be anticompetitive.

A. Extension of the Commission’s Rules Governing Access to Cable Inside Wiring for MVPDs to Telecommunications Providers Would Likely Hinder the Development Of Competition.

The Commission’s proposal to extend its rules governing access to cable inside wiring for MVPDs to telecommunications providers would come into play infrequently. Specifically, if a LEC wants to use cable inside wiring to provide video services, then that LEC will qualify as an MVPD (in addition to being a LEC), and, therefore, already will have the right to obtain the cable inside wiring under the Commission’s existing rules. Similarly, if a cable operator wants to expand into telephony, that entity – by virtue of its status as an MVPD – already is entitled to obtain the home-run wiring under the Commission’s existing rules. Accordingly, the only time that the proposal would apply is when a telecommunications carrier wants to use embedded home-run coaxial cable solely for telecommunications services. The distinct technical features of cable and telephone networks in MTEs, however, make this extremely unlikely, and, thus, the proposed rule change is unlikely to provide any competitive benefits in the provision of telecommunications services.²⁷ Moreover, as detailed below, there is a substantial risk that any such rule change would be used to impede broadband and video competition.

²⁷ From a legal perspective, too, it is important to recognize that the Commission’s Title VI authority over “cable” wiring is much more limited than its Title II authority over “telecommunications” wiring. The congressional grant of authority to establish rules for the disposition of cable on a customer’s premises after the customer terminates services is expressly limited to cabling “within the premises of such subscriber.” Cable Act, § 624(i), 47 U.S.C. § 544(i). Congress specifically provided that “this section limits the right to acquire home wiring to the cable installed within the interior premises of a subscriber’s dwelling unit.” H. Rep. 102-628, at 118 (1992). Conf. Rep., H. Rep. 102-862, at 86 (1992). Congress also limited any claims by LECs who wish to use cable network wiring from the last multi-user terminal to the end user

As a technical matter, both transmission path length and reliance on shared network resources make it unlikely that a LEC would make use of cable home run wiring to deliver telecommunications services alone. First, with respect to transmission path length, all wire communications facilities are designed around the engineering principle that it is easier to send a low-frequency signal a longer distance, without degradation, than a high-frequency signal. Thus, telephone facilities are characterized by long path lengths because a voice signal uses a small amount of low-frequency bandwidth. On the other hand, modern cable systems are engineered to propagate higher frequencies in delivering cable services over shorter path lengths. Within MTEs, this means that dedicated telephone loops generally terminate in the basement of a building or at a property line, whereas cable home run wires frequently run from cabinets on each floor to the individual units. As a result, a CLEC serving an MTE almost always will find it more attractive to use the existing telecommunications facilities rather than the cable inside wiring for which “home run” wires go from each unit to multiple demarcation points on the various floors.²⁸

premises, which includes cable drops and MDU wiring. Section 652(d)(2) forbids such use without the concurrence of the cable operator, and only on a temporary, limited basis. Conference Report No. 104-458, at 173-75 (1996), states that all that is contemplated is the use of “excess capacity” “with the concurrence of the cable operator” if “reasonably limited in scope and duration.” The comparable House version was described as permitting the use of the “drop” from the curb to the home by contract with the cable operator if limited in scope and duration. H. Rep. No. 104-204, at 103; Conf. Rep. No. 104-458, at 173. The Commission’s prior reliance on Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), to attempt to overcome these specific restrictions in the statute is under review by the Eighth Circuit. *See Charter Communications, Inc. v. FCC*, No. 97-4129 (8th Cir.) (held in abeyance pursuant to Order dated 12/24/97 pending FCC’s completion of reconsideration petitions; Status report due every 90 days). The Commission may consider it appropriate to resolve cable home run wiring issues in the cable docket, where the unique legal and factual issues are under more focused study.

²⁸ Some incumbent LECs have established multiple demarcation points within a single MTE as well, but these are simply administrative divisions of the on-premises wire into different categories, since each unit has a unique pair running back, if not to the central office, at least to a

Second, with respect to shared network resources, a traditional telephone network provides each customer with a unique, dedicated path between his or her premises and the central office. In a traditional cable network, by contrast, essentially the entire network is a shared medium, with all subscribers accessing the same, shared signal (comprising many different channels). Specifically, whatever bandwidth the cable system uses for telephone service is *shared* among all cable telephony customers on that part of the system. Indeed, one of the engineering challenges of offering telephony over a cable system is managing the number of telephone customers per node, and the allocation of bandwidth among them, in a manner that results in adequate service. This means that the use of cable bandwidth for telephony must be coordinated centrally for the entire system (or at least the portion of the system served by a single node in an HFC network), rather than building by building — including the bandwidth used in any “home run” wiring. As a result, it is unlikely that a LEC would seek to acquire cable home run wiring in order to terminate telephone calls within an MDU.

There is also an economic reason that CLECs would be unlikely to utilize cable home run wire for the Commission’s intended telecommunications use: what may be technically possible is very unlikely to be economically feasible. For example, it may be possible to connect local exchange network facilities to a device at the MTE that will modulate telephone signals onto home-run coaxial cable. It may also be possible then to equip each unit in the MTE with a device that “translates” the coaxial-cable-carried signal back to standard telephone signals (which would be necessary for the signal to be carried on the telephone wiring in an individual unit). But taking these steps would make no economic sense. There is no reason for a LEC to

common point on the MTE property. In the cable context, by contrast, the multiple demarcation points reflect real engineering changes in the facilities used to serve the customers.

spend extra money to convert standard telephone signals to signals traveling over coaxial cable, and then spend even *more* money on equipment at each unit to reconvert the signal back to standard telephony characteristics. That is especially so when all that is actually needed to provide telephone service is to cross-connect the LEC's network facilities to the existing premises *telephone* wire, already running to each unit, with a short piece of inexpensive copper.²⁹

Moreover, the more complex arrangement entails adding not one, but two non-standard failure points into each customer's service: one in the basement of the MTE (where non-standard equipment would have to be used to convert the telephone signal from the network into a format suitable for carriage on coaxial cable) and another in each unit (where non-standard equipment would have to be used to convert the signal back to a format suitable for transmission over standard twisted pair inside wiring and CPE). The proposed arrangement, in short, while not physically impossible, does not make any engineering or economic sense.³⁰ As result, the Commission's proposal, as a practical matter, would produce no material consumer benefits because it would not advance competition or consumer choice in MTEs.

There are also serious reasons for concern that the actual effect of the proposed rule would be anticompetitive. As an initial matter, it must be recognized that the proposed modification would have effect, if at all, only if the entity acquiring the cable is *not* an MVPD.

²⁹ The availability of existing copper wiring as an alternative to cable home run wiring, by itself, removes this proposal from the original justification for cable home run wiring rules, in which it was assumed that there was only one path in the MTE.

³⁰ These complexities are multiplied when a cable operator has configured an MTE network with home-run wiring on each floor, as opposed to home-run wiring for the entire MTE. In that case, to use the home-run coaxial cable for telephony would require twisted-pair-to-coax conversion on each separate floor, as opposed to only one conversion for the whole MTE. In these cases, the case against using the coaxial cable in this way becomes even more compelling.

That could obviously mean that the cable would be removed from broadband/video distribution service. It is hard to fathom any policy justification for establishing rules which would even permit such a result, much less facilitate or encourage it.

Moreover, the proposed rule change could be used by incumbent LECs to suppress cable modem competition. Telecommunications carriers — particularly incumbent LECs — have a strong, long-term interest in promoting DSL as a means of high-speed access to the Internet. An incumbent LEC, therefore, might well be willing to incur the inefficiencies of providing its telephone service over embedded coaxial cable in an arrangement with an MVPD that provided only video service and not *high-speed Internet access capability* — in order to remove cable-delivered high-speed Internet access as a competitive option for that MTE.³¹

There is no policy justification for the Commission to adopt a rule that would facilitate the *elimination* of competition in the provision of high-speed Internet access services in the MTE sector — where concentrations of customers make such competition likely to be most intense.

B. If The Commission Truly Wants To Promote MTE Competition, It Should Initiate A Proceeding To Prohibit Contracts And State Laws That Limit Consumers' MVPD Choices.

In the video context, cable operators have long suggested various regimes that would enhance consumer choice in MTEs, by foreclosing deals with landlords that would have the effect of limiting subscriber choice among providers.³² If the purpose of the Commission's

³¹ Moreover, telecommunications carriers could distort the valuation process for cable inside wiring by arguing that its fair market value should be measured by the lower value that such facilities have to pure telecommunications providers, as opposed to the greater value that such facilities have to an entity providing cable service.

³² For example, NCTA, AT&T, Charter, Comcast and others proposed cable home run wiring rules that would have permitted access by competing MVPDs to MTEs. The FCC deferred decision on the proposals. Report & Order and Second Further Notice of Proposed Rulemaking, *Telecommunications Services Inside Wiring in CS Docket No. 95-184; Customer Premises*

proposal is enhancement of telecommunications competition in cases where broadband home-run cable on MTEs is or can be used to offer telecommunications services, then the Commission should exercise its authority to preempt the exercise of any state law rights that close off MTEs from such competition, and should promulgate rules that discourage landlords from exerting market power on their premises with respect to the use of home-run coaxial cable.

Any such effort, however, would have to be undertaken on a wholesale, widespread manner. It would make no sense to try to promote the national policy favoring competition for telecommunications services while acceding to divergent state regimes that leave some buildings closed to competition and others open. Instead, the Commission would need to exercise its preemptive authority even-handedly.

Specifically, the premise of the proposal in the *Further Notice* seems to be that the potential use of cable home run wiring for telecommunications services (as opposed to purely video services) justifies allowing the ownership and use of that wiring by a CLEC (or even the ILEC). But if that is so, then that same potential use also justifies (for example) a rule that would mandate that the existing MVPD (presumptively being excluded from the premises, under current rules) be allowed to continue to serve customers on the MTE property, and to continue to use that home-run wiring for telephony.

In this regard, the Commission should recall that in the 1996 Act, Congress singled out cable as the most promising competitor to the ILECs.³³ As a result, it would be arbitrary and irrational to protect the cable home run wire for use by other telecommunications carriers, but to — in effect — carve out the cable operators who placed the wire in the first place from being

Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992 in MM Docket No. 92-260; Cable Home Wiring, 13 FCC Rcd 3659, ¶¶ 169-79 (1997).

³³ See Conf. Rep. No. 104-458, at 147-48.

able to use that same wiring in that same way. If it makes sense to view embedded home-run coaxial cable as a potential telecommunications facility, and to begin to treat it as presumptively available to competitors to offer telecommunications services, then Section 253 — as well as the overall pro-competitive policy of the 1996 Act — compels the conclusion that no state law can be allowed to operate to keep cable operators from using that wire, in their role as actual or potential telecommunications providers.

CONCLUSION

For the foregoing reasons, the Commission should (i) adopt a non-discriminatory access obligation on LECs, (ii) extend the prohibition on exclusive contracts to residential MTEs and rule that existing exclusive contracts may not be enforced, (iii) prohibit incumbent LEC preferential marketing arrangements, (iv) modify its construction of the scope of “right-of-way” obligations under section 224, and (v) decline to extend the cable inside wiring rules.

Respectfully submitted,

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Certificate of Service

I, Patricia A. Bunyasi, do hereby certify that I caused one copy of the forgoing Comments of AT&T Corp. to be served by hand delivery on all parties on the attached service list, this 22nd day of January, 2001.


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EXHIBIT A

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF THE)
COMPLAINT AND REQUEST FOR) Docket No. UT- 003120
EXPEDITED TREATMENT OF AT&T)
COMMUNICATIONS OF THE PACIFIC) COMPLAINT AND REQUEST FOR
NORTHWEST, INC. AGAINST QWEST) EXPEDITED TREATMENT OF
CORPORATION REGARDING) AT&T COMMUNICATIONS OF THE
PROVIDING ACCESS TO INSIDE) PACIFIC NORTHWEST, INC.
WIRE FOR AT&T TO PROVIDE)
LOCAL TELEPHONE SERVICE)

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AT&T Communications of the Pacific Northwest, Inc. ("AT&T") seeks relief regarding the actions of Qwest Corporation f.k.a. U S WEST Communications, Inc. ("Qwest") denying AT&T access to wiring inside various multiple dwelling units ("MDUs") in Washington.

As explained in detail below, as mandated by the Telecommunications Act of 1996, AT&T has been attempting to access wiring inside various MDUs which run from a point immediately adjacent to individual MDUs to various customer suites ("wiring inside the MDUs") in order to provide local telephone service to customers living in those MDUs. Even after extensive negotiation, Qwest has thwarted AT&T's efforts including Qwest's egregious act of pulling connected AT&T wiring and conduit from Qwest building access terminals located at the minimum point of entry ("MPOE terminal(s)")¹ in Bellingham, as well as demanding non-viable, cost-prohibitive and commercially coercive methods for AT&T to obtain access to wiring inside the MDUs.

¹ Using definitions articulated by the Federal Communications Commission, the MPOE terminal is also a Network Interface Device as it is a cross-connect device used to connect facilities to inside wiring and is a means of interconnection of customer premises wiring to the incumbent LEC distribution plant. See Federal Communications Commission Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (September 15, 1999) ("FCC Third Order") at ¶ 233.

Such actions by Qwest have made it virtually impossible for AT&T to provide local residential service to various Washington customers located in MDUs. Qwest's discriminatory conduct is contrary to the public interest as well as Washington and federal law.

AT&T requests expedited treatment of this Complaint since certain Washington customers are being denied competitive local services, and AT&T has exhausted all efforts at informal resolution.

In support of its Complaint, AT&T states the following:

PARTIES

1. AT&T is a telecommunications carrier registered and competitively classified to provide interexchange and local telecommunications services in Washington under authority of this Commission. AT&T's address for the Qwest region is 1875 Lawrence Street, Denver, Colorado 80202, and AT&T's address for the state of Washington is 1501 South Capitol Way, Suite 204, Olympia, Washington 98501-2200.

2. Qwest is a telephone company authorized to provide telecommunications services in Washington. Among other services, Qwest, as mandated by federal and Washington law, provides wholesale unbundled network element (UNE) access to competitive local exchange carriers (CLECs) within local calling areas in Washington for the transmission of two-way interactive voice and data communications. Qwest's principal place of business in Washington is 1600 7th Avenue, Room 3206, Seattle, Washington 98191.

JURISDICTION

3. The Washington Utilities and Transportation Commission (“Commission”) has jurisdiction over Qwest and AT&T because both companies are public service companies regulated by the Commission as to rates and services. RCW 80.01.040(3), RCW 80.04.010. The Commission has jurisdiction to entertain and resolve this Complaint under the following authority: RCW 80.01.040, RCW 80.04.110, RCW 80.36.080, RCW 80.36.090, RCW 80.36.170, RCW 80.36.186, RCW 80.36.260, WAC 80-36-300, WAC 480-09-230, WAC 480-09-400 and WAC 480-120-101. Specifically, the Commission has jurisdiction to adjudicate the complaint of a public service company against another public service company alleging “that rates, charges, rules, regulations or practices (are) unreasonable, ... discriminatory, illegal, unfair or intending to oppress the complainant, to stifle competition, or to create a monopoly.” RCW 80.04.110, WAC 480-09-400.

4. The Commission also has primary jurisdiction, under both RCW 80.36.170 and RCW 80.36.186, to determine whether any practice of a telecommunications company creates unreasonable preference or subjects any other telecommunications company to undue prejudice or competitive disadvantage.

5. As provided in RCW 80.36.140, the Commission is also charged with determining whether the practices of a telecommunications company are “inadequate, inefficient, improper or insufficient” and to “fix the same by order or rule as provided.”

STATEMENT OF FACTS

6. Since at least February 2000, AT&T has been attempting to provide local telephone service to various customer suites located inside MDUs. The only

economically feasible way for AT&T to service individual end user customers in MDUs is to connect its network to the existing wiring inside the various MDUs. That wiring inside the MDUs is either owned or controlled by the property owner or by a telecommunications company. In its tariff regarding wiring inside the MDUs, Qwest terms when the customer owns and/or controls the wiring inside the MDUs as “Option 1” or “Option 2” and when Qwest owns and/or controls the wiring inside the MDUs as “Option 3.” See Qwest Exchange and Network Services Tariff WN U-31, Sec. 2.8.1.B.5.

7. To access wiring inside the MDUs in both “Option 1” and “Option 3” MDUs, AT&T technicians would attach a short length, one inch thick conduit containing AT&T network wires between AT&T’s Network Interface Unit (“NIU”), the end point of its network, and the MPOE terminal, a cross-connect device used to connect wiring inside the MDUs to an outside network. AT&T implemented this method of inside wire access because it is legally consistent with the Telecommunications Act of 1996 and corresponding FCC regulations, as well as represents the most cost efficient and technically feasible approach to accessing wiring inside the MDUs to provide services for its MDU customers.

8. Before implementing this process, AT&T informed Qwest via e-mail letter of its protocol for access to wiring inside the MDUs. Qwest did not voice an objection to this protocol.

9. Instead, approximately eight months after its initial communication, AT&T technicians began to encounter padlocks on certain Qwest MPOE terminals at various “Option 3” MDUs. Thus, AT&T could not access the MPOE terminal to provide services to various Washington consumers.

10. Qwest's actions of padlocking its MPOE terminals halted AT&T's efforts to implement local telephone service and were in direct violation of the Telecommunications Act of 1996 and corresponding FCC regulations. *See* FCC Third Order ¶ 202 *et. seq.*; FCC First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and order in CC Docket No. 88-57 (October 25, 2000) at ¶ 48 ("FCC First Order"). *See also* Georgia Public Utilities Commission *In re:* Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.; Docket No. 10418-U; *In re:* MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc., Docket No. 10135-U.

11. AT&T attorneys immediately contacted Qwest attorneys demanding access to the MPOE terminals in question.

12. Qwest responded that it padlocked its MPOE terminals to protect its property, and/or because AT&T's access to wiring inside the MDUs was not contemplated in any prior agreement between the parties. However, Qwest personnel also assured AT&T personnel that AT&T would be provided with immediate access to the Qwest MPOE terminals at "Option 3" MDUs during an attempt to resolve the issue. In fact, on September 7, 2000, Terry Bahner of AT&T received correspondence from Mark Miller of Qwest indicating that he believed the NID padlocks had been removed.

13. One day after Mark Miller sent his assurances to AT&T, Qwest personnel disconnected all twenty of the conduits containing AT&T network wire connecting the

AT&T NIUs to the Qwest MPOE terminals located at Hideaway Apartments, 1213 Whatcom Street, Bellingham, WA. Qwest also posted stickers indicating that the MPOE terminals were Qwest property. Qwest's actions prevented AT&T from providing local telephone service to customers at Hideaway Apartments. By tearing out AT&T conduit and wires, Qwest also positioned itself to be the only local telephone carrier able to provide service to that property.

14. Qwest did not provide any notice that it planned to disconnect the conduit containing AT&T network wires, and such action was never discussed in any meeting or correspondence. AT&T was made aware of the disconnection when an AT&T technician was servicing the area.

15. Through e-mails, meetings and written correspondence between various account executives and attorneys on both sides, AT&T raised the above stated disconnection issue to Qwest reiterating that Qwest's actions halted AT&T's ability to provide local service to MDU consumers and prevented AT&T from participating in the marketplace.

16. During these discussions, Qwest acknowledged that the network architecture is analogous in both "Option 3" MDUs and "Option 1" MDUs. Furthermore, Qwest stated that it had no problems with AT&T's NIU to MPOE terminal wiring in "Option 1" MDUs. However, as to "Option 3" MDUs, Qwest demanded that AT&T undertake an arduous and infeasible "Field Connection Point" (FCP) process which required the following protocol:

- First, there would be a provisioning process of up to 150 days to determine the feasibility of installation of a Field Connection Point, what Qwest

describes as “a point of interconnection for Co-Providers located between the Feeder Distribution Interface (what AT&T considers to be its NIU) and the NID (a.k.a. MPOE terminal)” *See* Qwest’s Product Information re: Field Connection.

- Second, for each MDU, AT&T would be required to submit an order form to Qwest and wait for a Qwest account executive and a Qwest project manager to review the request and prepare a “feasibility study.” *Id.*
- Third, if Qwest determines that the FCP is feasible², Qwest would require AT&T to pay Qwest “special construction pricing” to construct the FCP at Qwest’s leisure. *Id.*
- Fourth, for every customer requesting AT&T service, AT&T would be required to coordinate a dual truck roll with Qwest wherein AT&T would dispatch one of its technicians to connect its network wires from its NIU to the FCP, and Qwest would dispatch a Qwest technician at the same time to switch wire from the Qwest MPOE terminal to the FCP. Furthermore, Qwest would charge AT&T \$59.00 per inside line for such “service.”

17. To AT&T’s knowledge, no other owner/controller of “Option 3” type wiring (including AT&T) has ever implemented such a complicated, expensive and practically infeasible process for competing carriers to gain access to wiring inside the MDUs. In fact, AT&T has elected at this time not to charge Qwest for access to wiring

² Under Qwest’s plan, it would be Qwest sole discretion if the FCP is feasible. Furthermore, Qwest does not define what criteria it would use to determine feasibility. If Qwest determines that an FCP is not feasible, Qwest could conceivably deny AT&T access to the MDU inside wiring.

inside the MDUs when AT&T owns such wiring.

18. As part of the "Field Connection Point" proposal, Qwest also demanded a monthly recurring charge of \$11.33 per subscriber line merely for the use of the wiring inside the MDUs. AT&T believes that this amount is at least three times higher than what any other ILEC has proposed to charge for such service in the country.

19. When AT&T protested the unconscionable nature of Qwest's demands, Qwest personnel told AT&T the only other alternatives were to have the building owner or AT&T buy the "Option 3" wires from Qwest at an undisclosed price, or for AT&T to install duplicative wiring inside the MDUs, both alternatives contrary to the Telecommunications Act of 1996 and corresponding FCC regulations. As to buying the "Option 3" wiring, Qwest suggested that AT&T approach the MDU owners to ask them to purchase the wiring inside the MDUs. Alternatively, Qwest requested that AT&T divulge confidential marketing information by informing Qwest of the buildings that AT&T was considering entering so that Qwest could contact those owners in an attempt to sell the inside wires to the property owner.

20. On September 29, 2000, after two weeks of fruitless negotiation, AT&T personnel indicated to Qwest personnel via written correspondence that AT&T would be forced to seek redress from the Commission as Qwest's positions were infeasible as well as beyond the confines of federal and Washington law.

21. On October 6, 2000 Qwest personnel responded that although AT&T was "vandalizing" Qwest property causing Qwest to lock its MPOE terminals, Qwest wanted to "work with" AT&T so that AT&T and Qwest could "move forward." At the same

time, Qwest personnel verbally communicated to AT&T personnel that a solution could be worked out to AT&T's satisfaction, avoiding the need to seek Commission redress.

22. Also on October 6, 2000, Qwest forwarded a revised "Access to Inside Wire for Option 3 Buildings" plan ("Option 3 Revised Plan") which did not contain any pricing and required the following protocol:

- First, AT&T would be required to construct a "common box" which Qwest would run its network wires to and AT&T would cross-connect from.
- Second, AT&T would be required to contact the building owner to seek permission to add the common box and see if the building owner would pay for the construction costs for the common box. If the building owner would not pay, Qwest would require AT&T to pay the construction costs. Qwest would further charge AT&T for the time that it would take to move its network wire with payment to be made in full before work could begin.
- Third, AT&T would be required to "provide maintenance" on Qwest owned inside wiring that AT&T ran to its customers.
- Fourth, AT&T would be required to pay Qwest \$800 per box minimum charge for "grooming" the building.

The common box proposal would also cost AT&T an estimated \$350 per box for materials and labor making it prohibitively costly to implement.

23. Even though Qwest's Option 3 Revised Plan was completely contrary to FCC regulations, *see* FCC Third Order at ¶205, 207, 216, 219, 223 and 226; FCC First Order at ¶ 48; Georgia Order at pp.4-8, AT&T continued to negotiate with Qwest as it

could not access potential customers located in these MDUs unless they were allowed access to wiring inside those MDUs. Through subsequent conversations, Qwest personnel indicated that it would provide internal wire pricing by October 23, 2000.

24. Instead of forwarding pricing on October 23, 2000, Qwest forwarded a Multi-Dwelling Unit Access Draft (“Access Draft Plan”), which adds additional, onerous terms to the Option 3 Revised Plan. This plan reads shockingly like the original “Field Connection Point” plan and requires the following protocol:

- First, AT&T would be required to submit an “MDU Access Form” to Qwest.
- Second, AT&T would have to submit a “site survey fee” which must be paid in full before Qwest begins the “survey.” The “survey” would determine if Qwest owns the inside wiring. If Qwest owns such wiring, AT&T would have to pay a “monthly fee” to lease that wiring.
- Third, AT&T would need to pay an additional non-recurring charge for the cost of “construction” which Qwest defines as “the cost of an engineer designing the job and a technician re-terminating the building cable facilities in the new common terminal.” That charge would need to be paid regardless of which party actually constructs the connection box.

If AT&T constructs the connection box, access would not be provided for thirty business days from the date of survey results; if Qwest constructs the connection box, it would be available thirty business days from submission of the MDU access form.

25. Based upon the above conduct by Qwest, AT&T has no alternative but to seek Commission relief, as the combination of the rates and procedures that Qwest

demands makes providing local service to MDUs in buildings with “Option 3” wiring infeasible both from a cost and process perspective, causing AT&T to suffer additional substantial damages and Washington customers to forego competitive services.

CAUSES OF ACTION

Count I: Unreasonable Advantage/Unfair Competition

26. AT&T incorporates the allegations in paragraphs 1 through 25 as if fully set forth herein.

27. In violation of RCW 80.36.186 and RCW 80.36.170, Qwest is subjecting AT&T to unreasonable prejudice and substantial competitive disadvantage in its prohibitive pricing and access parameters to wiring inside the MDUs.

28. The pricing scheme and arduous access parameters to wiring inside the MDUs are also unjust, unreasonable, discriminatory and unduly preferential entitling AT&T to seek reasonable prices and wiring parameters pursuant to RCW 80.36.140.

29. AT&T and various Washington consumers have been, and continue to be, harmed by Qwest’s violation of the above listed Washington and federal laws.

Count II: Failure to reasonably furnish telecommunications services

30. AT&T incorporates the allegations in paragraphs 1 through 29 as if fully set forth herein.

31. AT&T has a clear right to access inside wiring inside the MDUs at a “technically feasible point” which the FCC specifically states includes “the NID or the MPOE.” *See* FCC Third Order at ¶ 209-10. Furthermore, “an incumbent LEC **must** permit a requesting carrier to connect **its own** (network) facilities to the inside wire of the premises through the incumbent LEC’s network interface device, or any other technically

feasible point, to access the inside wire subloop network element.” *Id.* at ¶237 (emphasis added).

32. In violation of RCW 80.36.090, Qwest has failed to furnish to AT&T “suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded.”

33. In violation of RCW 80.36.080 Qwest has failed to render services to AT&T in “a prompt, expeditious and efficient manner.”

34. Qwest’s refusal to provide efficient access to certain wiring inside the MDUs and its actual disconnection of AT&T facilities violates RCW 80.36.080 and RCW 80.36.090.

35. AT&T and Washington consumers have been, and continue to be harmed by Qwest’s failure to reasonably furnish telecommunications service.

Count III: Unlawful Preference

36. AT&T incorporates the allegations in paragraphs 1 through 35 as if fully set forth herein.

37. RCW 80.36.186 bans undue or unreasonable preference or advantage to any telecommunications carrier providing noncompetitive services.

38. The wiring inside the MDUs that AT&T is attempting to obtain from Qwest constitutes noncompetitive service. *See* RCW 80.36.310, RCW 80.36.320.

39. Qwest’s conduct in demanding exorbitant and unprecedented fees as well as unnecessary use of Qwest personnel for AT&T to access its lines is motivated, in part, by its attempt to create unfair advantage by artificially inflating the price of its wire services to AT&T.

40. As the prices that Qwest is demanding make AT&T's provisioning of profitable local service impossible, AT&T and Washington consumers have suffered damages by Qwest's actions.

Count IV. Injury to Property

41. AT&T incorporates the allegations in paragraphs 1 through 40 as if fully set forth herein.

42. In violation of RCW 80.36.070, Qwest has injured and disabled AT&T conduit and network wire, both useful fixtures of the AT&T network.

43. Such injury has caused AT&T substantial damages.

PRAYERS FOR RELIEF

44. AT&T requests that the Commission, in an expedited manner:

(1) issue a declaratory order pursuant to RCW 80.36.186, RCW 80.36.170 and WAC 480-09-230 that Qwest's actions in disallowing AT&T access to "Option 3" wiring and destroying AT&T access conduit constitutes unreasonable advantage and unfair competition causing AT&T undue and unreasonable prejudice;

(2) issue a declaratory order pursuant to RCW 80.36.080, RCW 80.36.090, WAC 480-120-051 and WAC 480-09-230 that Qwest has failed to provide telephone services in a prompt and efficient manner by blocking access to "Option 3" wiring and creating a competitively infeasible protocol to access "Option 3" wiring;

(3) issue a declaratory order pursuant to RCW 80.36.186 and WAC 480-09-230 that Qwest's practice of creating functional and cost barriers constitutes giving itself and its affiliates an unreasonable preference by unreasonably disadvantaging AT&T and its current and potential customers;

(4) under the authority granted in RCW 80.36.140, RCW 80.36.260 and WAC 480-120-016, require Qwest to allow AT&T access to "Option 3" wiring inside the MDUs mandated in the FCC Third Order utilizing the most technically efficient and least costly method (i.e. the method historically used by AT&T);

(5) under the authority granted in RCW 80.36.140 and WAC 480-120-016, require Qwest to reduce its cost of access to "Option 3" wiring inside the MDUs to a realistic, just and reasonable figure;

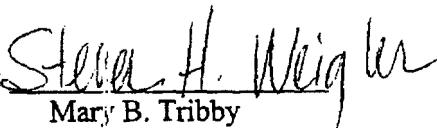
(6) under the authority granted in RCW 80.04.380, assess penalties against Qwest for each wire that Qwest has denied access to AT&T either through locking its MPOE terminals or actually disconnecting AT&T facilities;

(7) under the authority granted in RCW 80.36.070, assess damages against Qwest and for the benefit of AT&T for all injury sustained due to the destruction and disabling of AT&T conduit and network wire; and

(8) under the authority granted in WAC 480-120-016, provide any other relief that the Commission deems necessary and proper.

RESPECTFULLY submitted this 6th day of November 2000.

AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.

By: 

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303-298-6508

CERTIFICATE OF SERVICE

I certify that the original and nineteen copies of the Complaint and Request for Expedited Treatment of AT&T Communications of the Pacific Northwest, Inc. in Docket No. _____, were hand delivered on November 6, 2000 to:

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

I also certify that I have served copies of this document by facsimile and United States Mail, postage prepaid, selected under WAC 480-09-120(2)(b), upon the following:

Lisa Anderl
Qwest Corporation
1600 7th Avenue, Room 3206
Seattle, WA 98191

Rhonda Weaver