Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
| Qwest Corporation | ) | Transmittal No. 206 |

**PETITION OF AT&T CORP.**

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") submits this petition requesting the Commission to reject or, in the alternative, suspend and investigate Qwest Corporation's ("Qwest") Transmittal No. 206, filed August 16, 2004.[1] In this transmittal, Qwest proposes dramatic rate increases to many of its Interstate Private Line services in the Phase II Pricing Flexibility Wire Centers as defined in Section 23 of Qwest's Tariff F.C.C. No. 1.

For the third time in less than two years (and the second time in six months) Qwest is increasing rates for Special Access services in MSAs where it has received

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1 A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g.*, *American Broadcasting Companies, Inc.* v. *AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI* v. *AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T* (Transmittal No. 148), 56 RR2d 1503 (1984); *ITT* (Transmittal No. 2191), 73 F.C.C.2d 709, 716 n.5 (1979) (*citing AT&T*, 46 F.C.C.2d 81, 86 (1974)).

Phase II pricing flexibility.[2] With this transmittal, Qwest is proposing rate increases ranging from 9% to 94%, with an average rate increase of 27%.[3] This kind of across-the-board, unsupported rate increase is certainly not consistent with the intent of the Special Access/Dedicated Transport Phase II pricing flexibility Qwest was granted two years ago. Qwest's Transmittal No. 206 is just another example of how the current pricing flexibility rules have become a travesty and must be modified immediately.[4]

In its *Pricing Flexibility Order*, the Commission predicted that incumbent LECs would *lower* special access rates in response to the new competitive pressures that ostensibly permitted the incumbents to receive pricing flexibility.[5] However, local exchange carriers, such as Qwest, that have received pricing flexibility have *increased*, rather than decreased, their special access rates.[6] Qwest's special access rate of return, based on 2003 calendar year data, is a whopping 68%.[7] Despite this hefty return that

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[2] Qwest also filed for rate increases for its special access services in MSAs with Phase II pricing flexibility in Transmittal No. 145, effective November 1, 2002, and in Transmittal No. 186, effective February 28, 2004.

[3] *See* Exhibit A.

[4] For this reason, AT&T has filed a *Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM 10593, AT&T Corp. Petition (Oct. 15, 2002), and AT&T and other industry members sought mandamus relief when the Commission failed to take action on that Petition. *See In re AT&T Corp. et al.*, On Petition for a Writ of Mandamus Directing Action by the Federal Communications Commission, No. 03-1397 (D.C. Cir. Nov. 5, 2003).

[5] *Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd. 4221, ¶¶ 142, 154-155 (1999) ("*Pricing Flexibility Order*").

[6] Qwest raised rates for DS1 service in every Phase II MSA in its region. *See* AT&T Special Access Reply, RM 10593, at 22 (Jan. 23, 2003).

[7] Qwest 2003 ARMIS Report 43-01, filed April 1, 2004. The rate of return was computed by dividing the Special Access net return (column S, row 1915 equals $705,315,000), by the Special Access Average Net Investment (column S, row 1910 equals $1,036,068,000) for all fourteen states in Qwest's operating territory.

Qwest is receiving on its special access services, it continues to further gouge its customers by making unjustified, unsupported rate increases that fly in the face of the pricing flexibility it has received. The substantial, across-the-board, special access rate increases that Qwest is now proposing with this transmittal make it painfully obvious that there is no real threat of competition in the MSAs where Qwest has received Phase II pricing flexibility.

Competitors have been unable economically to extend their own facilities to the overwhelming majority of buildings, particularly the critically important DS-level "channel termination" facilities (*i.e.*, the local loops) that connect these customers' premises to incumbents' central offices. In fact, even in MSAs where rates were deregulated years ago, purchasers of special access services have facilities-based alternatives in fewer than one in ten buildings, and special access purchasers almost never have alternatives to the DS1 circuits that account for the overwhelming bulk of the incumbents' special access services. The FCC unanimously so found in its recent *Triennial Review Order*, 18 FCC Rcd. 16978 (2003), ¶ 324 ("it is feasible for [a competitive] carrier to self-deploy its own high-capacity [loop] facilities" only as the carrier "approaches customer demand for three DS3s of capacity at a particular customer location"); *id.* ¶¶ 386-93 (crediting evidence that construction of transport facilities is uneconomic on routes that do not carry at least twelve DS3s of traffic and "alternative [transport] facilities are not available to competing carriers in a majority of areas"); *id.* at ¶ 302 ("[s]mall to medium sized business customers generally demand services at the

DS1, and to a lesser extent, DS3 capacities").[8] As a result, Qwest can raise rates for most Interstate Private Line services to any level it desires without fear of losing customers.

Realizing that its special access customers have nowhere else to turn for connectivity in these MSAs, Qwest is proposing to use the flexibility it was granted not to reduce prices as a result of competition, but to increase prices as a result of *no* competition. Since being granted Phase II Pricing Flexibility for its Special Access/Dedicated Transport services, Qwest has increased the rates in these MSAs for its major private line services by an average of 55%.[9] Because Qwest has been granted Phase II pricing flexibility for this set of services in approximately 70%[10] of its territory, these rate increases affect a large majority of all special access services purchased by its customers. In 70% of its territory Qwest's ability to exercise market power is limited by neither competition nor regulation.

Ensuring that dominant carriers with market power charge just and reasonable rates is at the core of the Commission's mission. Since the Commission has granted Qwest nationwide long distance authority, it has greatly increased Qwest's incentive to raise its Special Access prices to impede competition in the provision of the many voice,

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[8] *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand, 18 FCC Rcd. 16978 (2003), *vacated and remanded in part*, *USTA* v. *FCC*, 359 F.3d 544 (D.C. Cir. 2004).

[9] Exhibit B shows that for a typical DS1 service Qwest's rates in areas where it has received pricing flexibility have increased by 47%. The same analysis for DS0 and DS3 services results in increases of 50% and 68%, respectively. *See* Exhibits C and D.

[10] The percent of Qwest's special access services with Phase II pricing flexibility was computed by dividing its price cap proposed special access revenues (using both its 2002 and 2003 Annual Filings to get an accurate average for calendar year 2003) by its 2003 ARMIS 43-01 special access revenues (filed April 1, 2004). Subtracting this price cap percentage from 100% results in the percentage of special access revenues that are in MSAs with Phase II pricing flexibility.

data, and Internet long distance services that depend upon special access. By rejecting Qwest's Transmittal No. 206, the Commission will take a first step at stopping the arbitrary, unnecessary special access rate increases that Qwest has continued to make since receiving Phase II Special Access/Dedicated Transport pricing flexibility.

## CONCLUSION

For the reasons stated above, the Commission should reject or, in the alternative, suspend and investigate for the full five months Qwest's tariff filing and impose an accounting order.

Respectfully submitted,

AT&T CORP.

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August 23, 2004

## CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 23rd day of August, 2004, a copy of the foregoing "Petition of AT&T Corp." was served by facsimile and U.S. first class mail, postage prepaid, on the party named below.

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