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Arizona Corporation Commission

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MAR 11 2004

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IN THE MATTER OF QWEST  
CORPORATION'S FILING AMENDED  
RENEWED PRICE REGULATION PLAN.

DOCKET NO. T-01051B-03-0454

IN THE MATTER OF THE  
INVESTIGATION OF THE COST OF  
TELECOMMUNICATIONS ACCESS.

DOCKET NO. T-00000D-00-0672

**QWEST CORPORATION'S  
RESPONSE TO AT&T'S MOTION  
FOR JOINDER**

Qwest Corporation ("Qwest") hereby responds to and opposes the Motion for Joinder of Persons Needed for Just Adjudication filed by AT&T of the Mountain States, Inc. ("AT&T") on February 27, 2004.

It is not necessary to join either Qwest Communications Corporation ("QCC") or Qwest LD Corporation ("QLDC") to achieve a just adjudication in this case. See Rule 19, Ariz.R.Civ.P.<sup>1</sup> Under Arizona law, the test for joining a necessary or indispensable party is whether the absent party's interest in the controversy is such that no final judgment or decree could be entered, doing justice between the parties actually before the tribunal and without injuriously affecting the rights of others not brought in the action.

See *Town of Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545, 549, 490 P.2d 551, 555

<sup>1</sup> Similarly, the standard for granting intervention in a Commission docket is to permit only those persons or entities that are directly and substantially affected by the proceedings. Arizona Administrative Code ("A.A.C.") R14-3-105.

1 (1971); *Douglas Investment Company v. C.E. Van Ness*, 105 Ariz. 541, 547, 468 P.2d  
2 568, 574 (1970). *See also, Salt River Valley Water Users' Association v. Giglio*, 113  
3 Ariz. 190, 197-98, 549 P.2d 162, 169-70 (1976). Neither QCC nor QLDC's absence as  
4 *parties* from Qwest's case meets this test.

5         The purpose of this docket is to set just and reasonable rates for Qwest in a manner  
6 that comports with the requirements of the Arizona Constitution. This includes whether  
7 Qwest's current or proposed intrastate access charges meet this requirement (within the  
8 context of its entire case), or whether the Commission should adopt the charges sought by  
9 AT&T or other parties. AT&T has repeatedly asserted that its primary interest in this  
10 docket is to ask the Commission to lower Qwest's intrastate access rates. *See, e.g.,*  
11 Prehearing Conference, Reporter's Transcript of Proceedings at 18-19 (February 23,  
12 2004). To state the obvious, those intrastate access rates are Qwest's, and not QCC's or  
13 QLDC's rates. Consequently, any such rate relief can be accorded among those already  
14 parties, even in the absence of QCC or QLDC. In fact, complete rate relief can only be  
15 obtained from Qwest itself. The Commission can clearly adjust Qwest's intrastate access  
16 rates in a manner it finds to be just and reasonable, and which considers AT&T's  
17 concerns, without adding QCC or QLDC as parties.

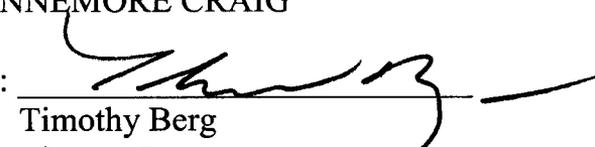
18         Neither Title 40, Ariz.Rev.Stats., the Commission's Affiliated Interest Rules, or  
19 A.A.C. R14-2-103—the Commission's rule defining the filing requirements—support  
20 mandating the involuntary inclusion of the separate corporate affiliates of a public service  
21 corporation in such cases. Qwest, QCC and QLDC are independent and distinct  
22 corporations; in fact, QCC and QLDC are separate affiliates of Qwest as required under  
23 Section 272 of the Telecommunications Act of 1996. As noted by AT&T, QCC and  
24 QLDC hold separate certificates of convenience and necessity as long distance carriers in  
25 Arizona. "The concept of a corporation as a separate entity is a legal fact, not a fiction."  
26 *Deutsche Credit Corp. v. Case Power & Equip. Co.*, 179 Ariz. 155, 160, 876 P.2d 1190,

1 1195 (App. 1995). This docket addresses the rates of Qwest, the entity that entered into  
2 the Price Cap Plan, and not the rates of QCC or QLDC. The intrastate access rates  
3 presently charged by Qwest and information relating to how Qwest implements those  
4 rates may be obtained from Qwest, and will be provided as part of it's A.A.C. R14-2-103  
5 filing. If AT&T wants to challenge the rates charged by QCC and QLDC, it should file a  
6 complaint against those entities (as well as all other carriers charging similar rates)<sup>2</sup>  
7 rather than trying to inject this issue as a means of inappropriately expanding this case.

8 In actual fact, AT&T seeks the joinder of QCC and QLDC simply so that it may  
9 more easily conduct discovery on these entities. This is not an adequate basis for  
10 asserting joinder. AT&T discovery rights and interest are amply protected in this docket  
11 by the means set forth in the Commission's rules for discovery on nonparties.

12 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of March, 2004.

13 FENNEMORE CRAIG

14  
15 By: 

16 Timothy Berg  
17 Theresa Dwyer  
18 3003 North Central Ave., Suite 2600  
19 Phoenix, Arizona 85012-2913  
20 (602) 916-5421

21 -and-

22 Todd Lundy  
23 Norman Curtright  
24 QWEST LAW DEPARTMENT  
25 1801 California Street  
26 Denver, CO 80202  
(303) 896-1446  
*Attorneys for Qwest Corporation*

<sup>2</sup> If this docket is intended to address whether other carriers are charging intrastate access rates below what AT&T believes their costs to be, then joining only QCC and QLDC will not address this issue and is potentially discriminatory. All other carriers charging similar rates must be joined as well.

1 ORIGINAL and 15 copies hand-delivered for  
filing this 11<sup>th</sup> day of March, 2004 to:

2 Docket Control  
3 ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
4 Phoenix, AZ 85007

5 COPY of the foregoing delivered  
this 11<sup>th</sup> day of March, 2004 to:

6 Jane Rodda  
7 Administrative Law Judge  
ARIZONA CORPORATION COMMISSION  
8 1200 W. Washington St.  
Phoenix, AZ 85007

9 Maureen A. Scott  
10 Legal Division  
ARIZONA CORPORATION COMMISSION  
11 1200 W. Washington St.  
Phoenix, AZ 85007

12 Ernest G. Johnson, Director  
13 Utilities Division  
ARIZONA CORPORATION COMMISSION  
14 1200 W. Washington St.  
Phoenix, AZ 85007

15 COPY of the foregoing mailed  
16 this 11<sup>th</sup> day of March, 2004 to:

17 Joan S. Burke  
Osborne Maledon  
18 2929 N. Central Ave., 21<sup>st</sup> Fl.  
Phoenix, AZ 85067

19 Scott S. Wakefield, Chief Counsel  
20 Daniel W. Pozefsky, Esq.  
RUCO  
21 1110 West Washington, Suite 220  
Phoenix, AZ 85007

22 Michael W. Patten  
23 Roshka Heyman & DeWulf, PLC  
One Arizona Center  
24 400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

25  
26

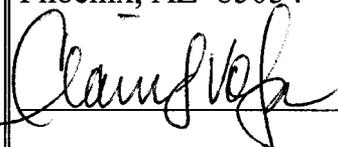
- 1 Mark A. DiNunzio  
Cox Arizona Telcom, LLC
- 2 20401 North 29<sup>th</sup> Avenue  
Phoenix, Arizona 85027
- 3
- 4 Thomas H. Campbell  
Michael T. Hallam  
Lewis and Roca
- 5 40 N. Central Avenue  
Phoenix, Arizona 85004
- 6
- 7 Thomas F. Dixon  
WorldCom, Inc.  
707 17<sup>th</sup> Street, 39<sup>th</sup> Floor
- 8 Denver, Colorado 80202
- 9 Richard S. Wolters  
Mary Tribby
- 10 AT&T  
1875 Lawrence Street, Room 1575
- 11 Denver, CO 80202-1847
- 12 Peter Q. Nyce, Jr.  
Regulatory Law Office  
U.S. Army Litigation Center
- 13 901 N. Stuart Street, Suite 713  
Arlington, VA 22203-1837
- 14
- 15 Richard Lee  
Snavey King Majoros O'Connor & Lee  
1220 L. Street N.W., Suite 410
- 16 Washington, DC 20005
- 17
- 18 Patrick A. Clisham  
AT&T Arizona State Director  
320 E. Broadmoor Court
- 19 Phoenix, AZ 85022
- 20 Accipiter Communications, Inc.  
2238 W. Lone Cactus Dr., Ste.100
- 21 Phoenix, AZ 85027
- 22 Alliance Group Services, Inc.  
1221 Post Road East
- 23 Westport, CT 06880
- 24 Archtel, Inc.  
1800 West Park Drive, Ste. 250
- 25 Westborough, MA 01581
- 26

- 1 Brooks Fiber Communications of Tucson, Inc.  
201 Spear Street, 9<sup>th</sup> Floor  
2 San Francisco, CA 94105
- 3 Centruytel  
PO Box 4065  
4 Monroe, LA 71211-4065
- 5 Citizens Utilities Rural Co. Inc.  
Citizens Communications Co. of Arizona  
6 4 Triad Center, Suite 200  
Salt Lake City, UT 84180
- 7 Citizens Telecommunications Co. of the White Mountains, Inc.  
8 4 Triad Center, Ste. 200  
Salt Lake City, UT 84180
- 9 Comm South Companies, Inc.  
10 2909 N. Buckner Blvd., Ste. 200  
Dallas, TX 75228
- 11 Copper Valley Telephone, Inc.  
12 PO Box 970  
Willcox, AZ 85644
- 13 Digital Services Corp.  
14 211 N. Union Street, Ste. 300  
Alexandria, VA 22314
- 15 Electric Lightwave, Inc.  
16 4 Triad Center, Ste. 200  
Salt Lake City, UT 84180
- 17 Eschelon Telecom of Arizona, Inc.  
18 730 Second Avenue South, Ste.1200  
Minneapolis, MN 55402
- 19 Ernest Communications, Inc.  
20 6475 Jimmy Carter Blvd., Ste. 300  
Norcross, GA 30071
- 21 Global Crossing Local Services, Inc.  
22 180 South Clinton  
Rochester, NY 14646
- 23 Global Crossing Telemanagement, Inc.  
24 180 South Clinton  
Rochester, NY 14646
- 25
- 26

- 1 Global Crossing Telecommunications, Inc.  
180 South Clinton  
2 Rochester, NY 14646
- 3 Intermedia Communications, Inc.  
3608 Queen Palm Drive  
4 Tampa, FL 33619-1311
- 5 Level 3 Communications, LLC  
1025 Eldorado Blvd.  
6 Broomfield, CO 80021
- 7 Max-Tel Communications, Inc.  
105 N. Wickham  
8 PO Box 280  
Alvord, TX 76225
- 9 MCI WorldCom Communications  
10 201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
- 11 MCIMetro  
12 201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
- 13 Metropolitan Fiber Systems of Arizona, Inc.  
14 201 Spear Street, 9<sup>th</sup> Floor  
San Francisco, CA 94105
- 15 Midvale Telephone Exchange  
16 PO Box 7  
Midvale, ID 83645
- 17 Navajo Communications Co., Inc.  
18 4 Triad Center, Suite 200  
Salt Lake City, UT 84180
- 19 Nextlink Long Distance Svcs.  
20 3930 E. Watkins, Ste. 200  
Phoenix, AZ 85034
- 21 North County Communications Corporation  
22 3802 Rosencrans, Ste. 485  
San Diego, CA 92110
- 23 One Point Communications  
24 Two Conway Park  
150 Field Drive, Ste. 300  
25 Lake Forest, IL 60045
- 26

- 1 Opex Communications, Inc.  
500 E. Higgins Rd., Ste. 200
- 2 Elk Grove Village, IL 60007
- 3 Pac-West Telecomm, Inc.  
1776 W. March Lane, #250
- 4 Stockton, CA 95207
- 5 The Phone Company/Network Services of New Hope  
6805 Route 202
- 6 New Hope, PA 18938
- 7 Rio Virgin Telephone Co.  
Rio Virgin Telephone and Cablevision
- 8 PO Box 189  
Estacada, OR 97023-000
- 9
- 10 Rhythm Links, Inc.  
9100 E. Mineral Circle  
Englewood, CO 80112
- 11
- 12 San Carlos Apache Telecommunications Utility, Inc.  
PO Box 701  
245 S. Hill
- 13 Globe, AZ 85502
- 14 Single Billing Services, Inc.  
9550 Flair Drive, Ste. 409
- 15 El Monte, CA 91731
- 16 South Central Utah Telephone Association, Inc.  
PO Box 226
- 17 Escalante, UT 84726-000
- 18 Southwestern Telephone Co., Inc.  
PO Box 5158
- 19 Madison, WI 53705-0158
- 20 Special Accounts Billing Group  
1523 Withorn Lane
- 21 Inverness, IL 60067
- 22 Sprint Communications Company, L.P.  
6860 W. 115<sup>th</sup>, MS:KSOPKD0105
- 23 Overland Park, KS 66211
- 24 Touch America  
130 N. Main Street
- 25 Butte, MT 59701
- 26

- 1 Table Top Telephone Co, Inc.  
600 N. Second Avenue  
2 Ajo, AZ 85321-0000
- 3 TCG Phoenix  
1875 Lawrence Street, Room 1575  
4 Denver, CO 80202
- 5 Valley Telephone Cooperative, Inc.  
752 E. Malley Street  
6 PO Box 970  
Willcox, AZ 85644
- 7 Verizon Select Services Inc.  
8 6665 MacArthur Blvd, HQK02D84  
Irving, TX 75039
- 9 VYVX, LLC  
10 One Williams Center, MD 29-1  
Tulsa, OK 74172
- 11 Western CLEC Corporation  
12 3650 131<sup>st</sup> Avenue SE, Ste. 400  
Bellevue, WA 98006
- 13 Williams Local Network, Inc.  
14 One Williams Center, MD 29-1  
Tulsa, OK 74172
- 15
- 16 XO Arizona Inc.  
3930 Watkins, Ste. 200  
17 Phoenix, AZ 85034

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- 25
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