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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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IN THE MATTER OF QWEST CORPORATION'S FILING OF 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

AT&T'S RESPONSE TO QWEST'S MOTION TO COMPEL

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby respond to Qwest Corporation's Motion to Compel Data Request Responses from AT&T Communications of the Mountain States, Inc and TCG Phoenix ("Qwest Motion"). The Qwest Motion should be denied because it requests information beyond the claims and issues pled in the case and, if granted, would impermissibly expand the scope of discovery beyond that which is allowed under Ariz. R. Civ. P. 26(b).

I. INTRODUCTION

On July 21, 2004, Qwest sent its first set of data requests to AT&T and to TCG. These requests, seeking information concerning the depreciation of specific

telecommunication assets both within and outside of Arizona, are extensive and unrelated to any issues raised in these proceedings to date. Qwest admits that it did not propose any changes to its depreciation lives as part of its direct case. Qwest Motion at 4. Rather, Qwest served AT&T with the requests after speculating, based on a discovery request from Staff, that Staff might, just possibly, recommend changes to Qwest's depreciation lives as part of its direct case. *Id.* The Qwest Motion, premised on mere conjecture, fails to comply with discovery rules and must be denied.

II. ARGUMENTS

The Qwest Motion succinctly states Qwest's position. However, AT&T believes the frankness of the Qwest Motion also provides the basis for why it cannot be granted. Rule 26(b) states that parties may obtain discovery regarding any matter that is relevant to the subject matter involved in the pending action, whether it relates to a claim or defense of a party seeking discovery or the defense of any other party. *See* Ariz. R. Civ. P. 26(b)(1). Qwest admits the information it seeks from AT&T does not relate to any claim it has made in the proceeding, nor does the information relate to any claim any other party has made in this proceeding.

Qwest states that discovery requests received from Staff, "strongly indicate that Staff will recommend changes to Qwest's depreciation lives as part of Staff's direct case." Qwest Motion at 4. This is purely speculation on Qwest's part. At this point, the information Qwest seeks is not relevant to any defense by Qwest because there is no direct case sponsored by Staff, or any other party, to which Qwest must respond.

Qwest asks AT&T to provide, for example, depreciation lives for 8 classes of plant: Buildings, Computer, Digital Switch, Digital Circuit, Aerial Cable – Metallic,

Buried Cable – Metallic, Underground Cable – Metallic, and Intra-Building – Metallic. *See* Qwest First Set of Data Requests, Request No. 3, attached as Tab A to the Qwest Motion. Qwest also asks for the net salvage value, survivor curve descriptions, depreciation rates, and vintage age distribution data for the same 8 classes of plant. *Id.*, Request Nos. 4-7. At this point there is no way of telling whether Staff is going to raise any issues with respect to any of these classes of plants or the categories of information sought regarding the classes of plant.

Stated another way, after reviewing Qwest's responses to discovery, Staff may not take issue at all with the manner in which Qwest depreciates its plant. In that case, Qwest's speculations, the sole grounds upon which Qwest makes its data requests to AT&T, would be proven wrong. Obviously, any resources spent in pursuit of data requests premised on speculations that could later be proven incorrect would be better served pursuing actual claims and defenses. *See, e.g., State Farm Mutual Automobile Ins. Co. v. Superior Court*, 167 Ariz. 135, 138, 804 P.2d 1323, 1326 (Ct. App. 1991) (finding discovery requests sought irrelevant information because they reached beyond the claims and issues pled in the case; while relevant information is any information "reasonably calculated to lead to the discovery of admissible evidence," this "must be interpreted in a realistic context of relevance"). Later, if Qwest's speculations are found to be valid, and the Staff raises depreciation lives in its direct case, Qwest may seek discovery related to this issue.

AT&T understands Qwest's concern regarding the schedule. However, all parties suffer from the same disadvantage. More importantly, this should not permit Qwest to seek broad discovery that is not relevant to any issues in the proceeding. If Qwest's

request is granted, there would be no practical limits to discovery. The effect would be to allow discovery on all hypothetical claims that could possibly be raised based on discovery propounded by other parties. No one can seriously argue that is the scope of discovery permitted by Rule 26(b). *See generally id.* (discussing that Rule 26(b) requires discovery requests to be narrowed “to a time period or to facts similar to those at issue” in the case). Not only does Qwest’s request not conform to Rule 26(b), in all fairness to AT&T, it should not have to answer extensive questions based on mere conjecture. *See id.* at 139, 1327; Ariz. R. Civ. P. 26(b)(1)(iii) (limiting discovery when it is “unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation”).

Secondly, AT&T does not believe its depreciation rates and methods are relevant to the methods and rates that should be established for Qwest. Qwest relies on a prior Commission decision as a basis of compelling AT&T to provide its depreciation rates and methodologies. Qwest Motion at 4 (citing *In the Matter of the Application of U.S. WEST Communications, Inc. for Changes in its Depreciation Rates*, Decision No. 6257). The decision Qwest refers to suggests that Qwest’s depreciation lives should be set within the range of Qwest’s competitors. However, Qwest has not established or even suggested that AT&T is a relevant competitor.

AT&T is predominantly a long distance competitor. It recently announced that it would no longer be marketing local and long distance service to residential consumers in Arizona. AT&T does not own loops that connect AT&T switches to residential

customers. AT&T's network is not as extensive as Qwest's and is not designed the same.¹

Finally, Qwest's requests are not limited to AT&T's plant in Arizona. Qwest seeks information regarding depreciation rates used by AT&T nationwide. Such an overly broad, nationwide request violates Rule 26(b). *State Farm Mutual Automobile Ins. Co.*, 167 Ariz. at 139, 804 P.2d at 1327 (finding nationwide discovery request violated Rule 26(b) because it was unduly burdensome and overbroad). The Arizona Commission has jurisdiction over Qwest's Arizona plant and can set rates only related to Qwest's Arizona plant in service. Furthermore, AT&T's depreciation rates are no longer set by either the Federal Communications Commission or the Arizona Corporation Commission for regulatory purposes.

For the foregoing reasons, the Qwest Motion should be denied.

¹ Generally, Qwest's Network is hierarchal while AT&T's local network is not. Further, AT&T generally has less switches serving the same geographical area as multiple Qwest switches.

Dated this 16th day of September, 2004.

**AT&T COMMUNICATIONS OF THE
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(Docket No. T-01051B-03-0454, T-00000D-00-0672)

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