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IN THE MATTER OF THE APPLICATION)
OF US WEST COMMUNICATIONS, INC.)
FOR A HEARING TO DETERMINE THE)
EARNINGS OF THE COMPANY FOR)
RATEMAKING PURPOSES, TO FIX A JUST)
AND REASONABLE RATE OF RETURN)
THEREON AND TO APPROVE RATE)
SCHEDULES)

DOCKET NO. T-01051B-99-0105

AT&T'S SECOND MOTION TO COMPEL U S WEST TO ANSWER AT&T'S
EIGHTH SET OF DATA REQUESTS

AT&T Communications of the Mountain States, Inc. ("AT&T") moves to compel U S WEST Communications, Inc. ("U S WEST") to respond to AT&T's Eighth Set of Data Requests.

I. INTRODUCTION

AT&T's Eighth Set of Data Requests contains one data request, AT&T No. 71. AT&T No. 71 requests specific back-up materials for plant additions identified by U S WEST in its response to AT&T No. 38.

AT&T No. 38 essentially requested a list and description of plant additions for the years 1996, 1997 and 1998. U S WEST objected to the request, arguing the request was unduly burdensome. AT&T filed a motion to compel U S WEST to respond to AT&T No. 38. On August 30, 1999, arguments were heard on AT&T's Motion. U S WEST, when faced with the choice of either providing the information or having the investments

disallowed, agreed to provide AT&T access to the information. TR. 36-37 (Aug. 30, 1999). U S WEST subsequently answered AT&T No. 38, not by providing access to the information, but by providing AT&T a diskette containing the information.

AT&T reviewed the response and selected 176 plant additions for which it requested more detailed information. AT&T provided U S WEST with an Excel spreadsheet of the 176 plant additions. U S WEST basically ignored AT&T's request. In response to a letter dated March 6, 2000, from Richard S. Wolters, attorney for AT&T, to Timothy Berg, attorney for U S WEST, U S WEST stated that it had answered AT&T No. 38.

To avoid protracted arguments over whether AT&T's follow-up request was or was not within the scope of AT&T No. 38, AT&T sent AT&T No. 71 to U S WEST on March 15, 2000. U S WEST has objected to AT&T No. 71.

II. ARGUMENTS

AT&T No. 71 states:

For the 176 plant additions identified in the attached Excel spreadsheet provide copies of all invoices, work or job orders and engineering plant records. Also identify whether each project was recorded as regulated or non-regulated and provide the documentation from the engineering department identifying such classification.

The list of 176 plant additions is based on AT&T's review of the list of plant additions provided in response to AT&T No. 38. AT&T selected investments in xDSL, frame relay, advanced services, investments made by U S WEST to provide interconnection and

investments made to provide number portability. The cut-off was investments that exceeded \$100,000.¹

U S WEST objected to AT&T No. 71:

U S WEST objects to Data Request No. 71 on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to discovery of admissible evidence and calls for highly competitively sensitive information.

None of U S WEST's objections have merit. First, confidentiality is not a valid objection to a proper discovery request. *Cornet Stores v. Superior Ct. in and for Co. of Yavapai*, 108 Ariz. 84, 492 P.2d 1191, 1195-1196 (1972). Furthermore, U S WEST has the burden of showing the request is unduly burdensome or overbroad. *Id.* U S WEST has made no showing the request is burdensome or overbroad.

It is interesting to note that in its response to AT&T's First Motion to Compel regarding AT&T No. 38, U S WEST argued that AT&T's request was "not limited to any particular size..." AT&T has limited AT&T No. 71, by not asking for the information for every single item plant addition identified in response to AT&T No. 38. AT&T has also selected a reasonable cut-off amount based on the size of the investment. Therefore, AT&T has attempted to limit the scope of its request.

U S WEST argues that the request is not reasonably calculated to lead to the discovery of admissible evidence. U S WEST is mistaken. The information requested is extremely relevant, because it will permit AT&T to determine if the investments added to the Plant in Service account are used and useful in the provision of regulated services, or whether the investments should be excluded because the investments were made to provide deregulated services or should be allocated to the interstate jurisdiction.

¹ On January 5, 2000, in response to a request from U S WEST, AT&T sent a letter to U S WEST identifying the process it used to select the 176 plant additions.

U S WEST has argued that advance services are interstate services subject to Federal Communications Commission's ("FCC") jurisdiction. U S WEST presently offers its Megabit service out of a FCC tariff. Therefore, arguably, none of the investments in xDSL and advanced services should be allocated to the intrastate jurisdiction and recovered through intrastate rates.

The FCC has stated that the cost recovery mechanism for interim number portability must be competitively neutral and meets the FCC's guidelines. The FCC also stated that for long term number portability cost recovery, it adopted an exclusively federal cost recovery mechanism.² In fact, in its *Third Report and Order*, the FCC held that number portability costs would not be subject to jurisdictional separations.³ Finally, in the proceeding to review U S WEST's long term number portability tariff filings, the FCC rejected U S WEST's proposal.

We agree with Ad Hoc that U S WEST's proposal for treating its number portability costs and revenues actually continues to apply separations to both those number portability costs and revenues. This treatment violates our decision in the *Third Report and Order* that, under the "exclusively federal" number portability cost recovery mechanism incumbent LECs' number portability costs would not be subject to jurisdictional separations. U S WEST's offer to give intrastate ratepayers a revenue credit for any federally-allowed number portability costs does not change our decision. This would leave the burden on U S WEST or the states to monitor on a continuous basis the possibility of even accidental double recovery of number portability costs.⁴

Furthermore, the FCC noted that "U S WEST has represented that the relatively small amount of OSS [number portability] costs are the only costs recovered through the state jurisdictions, and that, on a prospective basis, its claimed number portability costs

² *Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, FCC 99-151 (rel. July 16, 1999), ¶29.

³ *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd. 11701, 11720, ¶ 29.

⁴ *Long Term Number Portability Tariff Filings*, CC Docket No. 99-35, *U S WEST Communications, Inc.*, Transmittal Nos. 965, 972, 1002, Memorandum Opinion and Order, FCC 99-169 (rel. July 16, 1999), ¶ 95.

are not, and will not be, subject to separations treatment."⁵ And finally, the FCC stated that "U S WEST's assertions may best be evaluated by state commissions in their own rate-making proceedings." *Id.*, ¶ 97. Therefore, it is obvious that number portability plant additions are relevant, because number portability costs must be excluded from rate base.

Interconnection costs are suppose to be recovered from the rates charged to competitive local exchange carriers. The rates established for interconnection provide a return on investment and allow U S WEST to collect joint and common costs. Therefore, U S WEST recovers its costs for interconnection, and none of the costs of interconnection with competitive local exchange carriers should be in rate base.

III. CONCLUSION

It is readily apparent that AT&T's request is reasonably calculated to lead to the discovery of admissible evidence. U S WEST may disagree with AT&T's legal arguments; however, if AT&T prevails on its arguments, the investments identified by AT&T must be removed from rate base. Furthermore, AT&T has limited the scope of its request.

Although it has the burden to do so, U S WEST has not provided any evidence that AT&T's request is unduly burdensome. As for the allegations the information is confidential, a Protective Agreement has been entered into by AT&T and U S WEST to address the exchange of confidential information.

AT&T respectfully requests that the Hearing Officer grant its Motion to Compel and order U S WEST to respond to AT&T No. 71..

⁵ *Id.*, ¶ 96. By not subjecting number portability costs to the separations process, all costs will be recovered exclusively through the federal mechanism.

DATED this 4th day of April, 2000.

**AT&T COMMUNICATIONS OF THE
MOUNTAIN STATES, INC.**

By: 

Thomas C. Pelto
Richard S. Wolters
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6741
(303) 298-6301 – Fax
rwolters@att.com

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T's Second Motion to Compel U S WEST to Answer AT&T's Eighth Set of Data Requests regarding Docket No. T-01051B-99-0105, were sent via overnight delivery this 4th day of April, 2000, to:

Arizona Corporation Commission
Docket Control - Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent via Facsimile and United States Mail, postage prepaid, this 4th day of April, 2000, to:

Timothy Berg
Theresa Dwyer
Fennemore Craig, P.C.
3003 North Central, Suite 2600
Phoenix, AZ 85012
FAX: (602) 916-5621

and a true and correct copy was sent via United States Mail, postage prepaid, this 4th day of April, 2000, to:

Carl J. Kunasek, Chairman
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Jerry Porter
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Jim Irvin, Commissioner
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Patrick Black
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

William A. Mundell, Commissioner
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Hercules Alexander Dellas
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Deborah Scott
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Lyn Farmer, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Craig Marks
Citizens Utilities Company
2901 North Central Avenue, Suite 1660
Phoenix, AZ 85012

Darren S. Weingard, Senior Attorney
Natalie D. Wales, Attorney
Sprint Communications Company L.P.
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & Dewulf PLC
Two Arizona Center
400 North 5th Street, Suite 1000
Phoenix, AZ 85004

Thomas F. Dixon
MCI WorldCom, Inc.
707 17th Street, Suite 3900
Denver, CO 80202

Richard Lee
Snavelly, King & Majoros
O'Connor & Lee, Inc.
1220 L. Street, N. W., Suite 410
Washington, DC 20005

Jim Scheltema
Blumenfeld & Cohen
1625 Massachusetts Ave N.W., Suite 300
Washington, DC 20036

Albert Sterman
Arizona Consumers Council
2849 E. 8th Street
Tucson, AZ 85716

Steven J. Duffy
Ridge & Isaacson, P.C.
3101 North Central Avenue, Suite 432
Phoenix, AZ 85012

Thomas Dethlefs
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

Scott S. Wakefield
Chief Counsel
RUCO
2828 North Central Avenue, Suite 1200
Phoenix, AZ 85004-1022

Peter Q. Nyce
General Attorney, Regulatory Law Office
U. S. Army Legal Services Agency
Department of the Army
901 N. Stuart Street, Suite 700
Arlington, VA 22203-1837

Douglas Hsiao
Rhythm Links, Inc.
6933 Revere Parkway
Englewood, CO 80112

Diane Bacon, Legislative Director
Communications Workers of America
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, AZ 85004-0001

Thomas H. Campbell
Lewis and Roca
40 North Central Avenue
Phoenix, AZ 85004

Martin A. Aronson
William D. Cleaveland
Morrill & Aronson, P.L.C.
One East Camelback, Suite 340
Phoenix, AZ 85012-1648

Chuck Turner, Mayor
Town of Gila Bend
P. O. Box A
644 W. Pima Street
Gila Bend, AZ 85337-0019

Mr. Ed McGillivray
300 S. McCormick
Prescott, AZ 86303

Carla Dickinson