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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 CARL J. KUNASEK  
Chairman

3 JAMES M. IRVIN  
Commissioner

4 WILLIAM MUNDELL  
Commissioner

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

DOCKETED BY [Signature]

6 IN THE MATTER OF THE APPLICATION  
7 OF U S WEST COMMUNICATIONS, INC.,  
8 A COLORADO CORPORATION, FOR A  
9 HEARING TO DETERMINE THE EARNINGS  
10 OF THE COMPANY, THE FAIR VALUE OF  
11 THE COMPANY FOR RATEMAKING  
12 PURPOSES, TO FIX A JUST AND  
13 REASONABLE RATE OF RETURN THEREON  
14 AND TO APPROVE RATE SCHEDULES  
15 DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. T-01051B-99-0105

U S WEST COMMUNICATIONS  
INC.'S RESPONSE TO AT&T'S  
MOTION TO COMPEL

16 U S WEST Communications, Inc. ("U S WEST") submits the  
17 following response to AT&T Communications of the Mountain States,  
18 Inc.'s ("AT&T") Motion to Compel Answers to its Eighth Set of Data  
19 Requests.

ARGUMENT

20 AT&T has served a data request on U S WEST asking for  
21 detailed information concerning U S WEST's network. AT&T Data  
22 Request No. 71 asks for "invoices, work or job orders and  
23 engineering plant records" for 176 plant additions. AT&T selected  
24 these 176 plant additions because they involved advanced services  
25 provided by U S WEST in competition with AT&T. (See letter  
26 attached as Exhibit 1). This information is not relevant to this  
proceeding. In addition, it is highly confidential information  
and could be used by AT&T to gain a competitive advantage.

1 U S WEST has objected to Data Request No. 71 on the grounds  
2 that it is not reasonably calculated to lead to the discovery of  
3 admissible evidence, that it calls for highly confidential  
4 information and that it is unduly burdensome. AT&T refuses to  
5 limit Data Request No. 71 and has moved to compel. AT&T's motion  
6 should be rejected for two reasons:

7 First, a response to AT&T Data Request No. 71  
8 calls for highly confidential information, is  
9 unduly burdensome and is not reasonably  
10 calculated to lead to the discovery of  
11 admissible evidence. In fact, a response to  
12 Request No. 71 will not provide the  
13 information that AT&T contends in its motion  
14 is relevant.

15 Second, AT&T should not be permitted to  
16 request compliance with its discovery  
17 requests when it consistently refuses to  
18 respond to discovery served on it by other  
19 parties and will not comply with Commission  
20 protective orders.

21 **I. AT&T DATA REQUEST NO. 71 CALLS FOR HIGHLY CONFIDENTIAL  
22 INFORMATION, IS UNDULY BURDENSOME AND IS NOT REASONABLY  
23 CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE  
24 EVIDENCE.**

25 AT&T Data Request No. 71 is related to AT&T Data Request No.  
26 38 which U S WEST has already answered. Data Request No. 38  
requested the following:

For the years ending December 31, 1996, 1997  
and 1998, separately, please identify all  
projects by name, number and code, together  
with a description of each, which resulted in  
an increase in Telephone Plant in Service,  
specify the amount of the increase in  
investment for Telephone Plant in Service  
associated with that project, and the date on  
which the increase in investment for

1 Telephone Plant in Service was entered on U S  
2 WEST's accounting ledger.

3 U S WEST responded to this request with both a disc and over a two  
4 hundred page listing. AT&T does not contend that the response to  
5 Data Request No. 38 is inadequate but it now insists that further,  
6 specific data relating to highly competitive projects is  
7 necessary.

8 In Data Request No. 71, AT&T requests the following:

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

17 U S WEST objects to Request No. 71 on the ground that it is not  
18 reasonably calculated to lead to the discovery of admissible  
19 evidence. In addition, it is unduly burdensome and calls for  
20 highly confidential information that AT&T, a competitor of  
21 U S WEST, should not be given access to. The records requested  
22 are in various locations (conceivably in more than one hundred  
23 locations), are voluminous (conceivably enough paper to fill a  
24 small warehouse) and contain network information that AT&T could  
25 use to gain a competitive advantage.

26 AT&T erroneously argues that the information is necessary so  
that AT&T can determine whether the investments selected have been  
properly allocated to the correct category (regulated versus  
nonregulated) and the proper jurisdiction (intrastate versus

1 interstate). The fallacy in AT&T's argument is that the  
2 documentation requested does not provide information concerning  
3 these categorizations. The categorization of investment as  
4 regulated or nonregulated or as intrastate or interstate is not  
5 contained in "invoices, work or job orders and engineering plant  
6 records." Thus, even if U S WEST answered Data Request No. 71 in  
7 full, AT&T would not have the information it contends Data Request  
8 No. 71 seeks to solicit.

9 **II. AT&T'S MOTION TO COMPEL SHOULD NOT BE HEARD UNTIL SUCH**  
10 **TIME AS AT&T COMPLIES WITH OUTSTANDING DISCOVERY AND**  
11 **DEMONSTRATES THAT IT COMPLIES WITH COMMISSION**  
12 **PROTECTIVE ORDERS.**

13 The Commission should not even entertain AT&T's motion until  
14 AT&T demonstrates that it will comply in good faith with discovery  
15 and Commission orders. Two points need to be made. First, AT&T  
16 has to date refused to respond to discovery requests served on it.  
17 While U S WEST has responded to more than seventy data requests  
18 served by AT&T and has provided AT&T with copies of responses to  
19 more than fifteen hundred other data requests served by other  
20 parties in this proceeding, AT&T has not responded to one request  
21 served by U S WEST.

22 Second, the information that AT&T has requested is highly  
23 confidential information. Since AT&T does not appear to be  
24 complying with protective orders in place in Arizona and other  
25 states, U S WEST does not believe that information provided to  
26 AT&T would be kept confidential. On April 9, 2000, the Denver  
Post published a picture that reveals that Mr. Thomas Pelto was

1 given access to highly confidential information relating to the  
2 Qwest merger that Mr. Pelto was not entitled to have access to.  
3 Attached as Exhibit 2 is a color copy of the picture. Highly  
4 Confidential information is on pink paper and is shown in the  
5 picture.

6 When the Commission enters protective orders in this and  
7 other proceedings, it is expected that parties will comply with  
8 the protective orders entered. Exhibit 2 demonstrates that AT&T  
9 cannot be relied upon to comply with state commission protective  
10 orders. Until AT&T demonstrates that it complies with orders  
11 entered in this proceeding, AT&T should not be given access to  
12 confidential information in discovery.

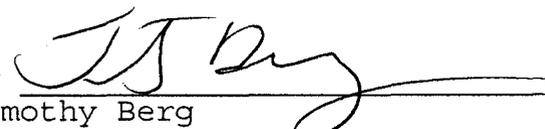
13 WHEREFORE, for the foregoing reasons, AT&T's motion to compel  
14 responses to its eighth set of data requests should be denied.

15 RESPECTFULLY SUBMITTED this 13<sup>th</sup> Day of April, 2000.

16 U S WEST COMMUNICATIONS, INC.  
17 Law Department  
18 Thomas Dethlefs

19 and

20 FENNEMORE CRAIG

21 By   
22 Timothy Berg  
23 Jennifer Prendiville  
24 3003 N. Central Avenue, Suite 2600  
25 Phoenix, Arizona 85012-2913  
26 Attorneys for U S WEST  
Communications, Inc.

1 ORIGINAL of the foregoing hand-delivered  
2 for filing this 13<sup>th</sup> day of  
3 April, 2000, to:

4 Docket Control  
5 ARIZONA CORPORATION COMMISSION  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 COPY of the foregoing hand-delivered  
9 this 13<sup>th</sup> day of April, 2000, to:

10 Maureen Scott  
11 ARIZONA CORPORATION COMMISSION  
12 Legal Division  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 Deborah Scott  
16 Director, Utilities Division  
17 ARIZONA CORPORATION COMMISSION  
18 1200 West Washington  
19 Phoenix, Arizona 85007

20 Jerry L. Rudibaugh, Chief Hearing Officer  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 W. Washington  
24 Phoenix, AZ 85007

25 COPY of the foregoing mailed  
26 this 13<sup>th</sup> day of April, 2000, to:

27 Scott S. Wakefield, Chief Counsel  
28 Residential Utility Consumer Office  
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JAN 05 2000



Richard S. Wolters  
Senior Attorney

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VIA FACSIMILE AND US MAIL

January 5, 2000

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

Re: U S WEST's AZ 271 Application  
Docket No. T-00000A-97-238

Dear Tom:

You requested that AT&T Communications of the Mountain States, Inc. identify the process it used to select the 176 plant additions contained in the Excel spreadsheet provided to you along with my letter to you dated December 13, 1999. 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.

Sincerely,

AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.

A handwritten signature in cursive script, appearing to read "Richard S. Wolters".

Richard S. Wolters

cc: Timothy Berg, Fennemore Craig  
Joan Burke, Osborn Maledon

RSW/crd



Tom Pelto, left, and Chuck Ward, both executives with AT&T, stand behind a mountain of paperwork last week that deal with the merger of Qwest and U S West.

The Denver Post / Lew Sherman