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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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2004 SEP 29 P 2:23

SEP 29 2004

AZ CORP 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

PROCEDURAL ORDER

BY THE COMMISSION:

On September 7, 2004, Qwest Corporation ("Qwest") filed a Motion to Compel AT&T Communications of the Mountain States, Inc. ("AT&T") and TCG Phoenix ("TCG") to respond to certain data requests. Qwest is seeking information from AT&T and TCG concerning the depreciation of specific telecommunications assets in Arizona.

On September 17, 2004, AT&T and TCG filed a Response to Qwest's Motion to Compel. AT&T and TCG object to Qwest's data request for depreciation information because 1) as it currently stands, depreciation rates are not an issue in the proceeding, and 2) AT&T and TCG do not believe that their depreciation rates and methods are relevant to the establishment of Qwest's depreciation rates.

On September 22, 2004, Qwest filed a Reply in support of its Motion to Compel. Qwest states that it does not seek AT&T and TCG to file a response to its data request for information on depreciation rates unless and until the issue of Qwest's depreciation rates is raised in Staff's direct testimony. Qwest reached a similar agreement with another Competitive Local Exchange Carrier ("CLEC") under which that CLEC will provide the requested depreciation information within 10 business days of Staff filing testimony that raises depreciation rates as an issue. Qwest makes the same offer of compromise to AT&T and TCG.

1 On September 17, 2004, Arizona Corporation Commission (“Commission”) Utilities Division
2 Staff (“Staff”) filed a Motion to Compel Qwest to Respond to Staff Data Requests. According to
3 Staff, Staff is awaiting responses to approximately 87 data requests that are overdue. Staff asserts
4 that its ability to file complete testimony by its October 19, 2004 deadline is endangered by the large
5 number of outstanding and past due responses. Qwest has objected to only two of Staff’s requests.
6 Staff requested an expedited procedural conference on its Motion.

7 By Procedural Order dated September 20, 2004, oral argument on Qwest’s and Staff’s
8 motions was set for September 27, 2004.

9 Pursuant to the September 20, 2004 Procedural Order, Qwest filed its Response to Staff’s
10 Motion to Compel on September 24, 2004. Qwest’s Response also contained a Cross-Motion for the
11 imposition of discovery limits. In its Response to Staff, Qwest stated that there remain 39 responses
12 to data requests, which Staff has identified as overdue (35 from Utilitech and 4 from Dunkel). Qwest
13 asserts that responses to a number of the “overdue” requests had been provided prior to Staff’s
14 Motion and that Qwest continues to attempt to respond to Staff’s request. Qwest believes that the
15 remaining 39 responses can be provided to Staff by October 1, 2004.

16 Staff Motion to Compel

17 At the September 27, 2004, Procedural Conference, Qwest believed there remained 30
18 Utilitech and 4 Dunkel “overdue” responses still outstanding. Qwest stated it would use its best
19 efforts to attempt to get these responses to Staff by October 1, 2004. Staff stated that it was not
20 requesting an extension of the deadline to file testimony at this time, but stated that its ability to file
21 complete testimony by October 19, 2004, even if Qwest can provide responses by October 1, 2004,
22 would depend on the completeness of Qwest’s responses and the need for follow-up questions.

23 Qwest believed that Staff was engaging in discovery that is broader in scope than is necessary
24 to investigate and make recommendations concerning its renewed Price Cap Plan. Staff argued that it
25 needed to be able to fully investigate the basis of Qwest’s claimed revenue deficiency, and vigorously
26 denied that its data requests were overly broad or immaterial.

27 Staff’s interest in this case, representing the public interest, is very broad. Qwest has
28 indicated that if the Commission does not approve a Price Cap Plan under acceptable terms to Qwest,

1 it may opt to return to traditional rate regulation. The Commission must have sufficient information
2 in the record to allow it to set fair and reasonable rates either under some form of Price Cap Plan,
3 traditional regulation, or some other alternative form. Based on the arguments to date, it does not
4 appear that the scope of Staff's inquiries are unnecessarily over-broad. Staff must be able to gather
5 the information it believes necessary to make a complete and informed recommendation to the
6 Commission. Consequently, we order Qwest to provide responses to the overdue data responses by
7 October 1, 2004.

8 The Commission is concerned that without access to the requested information, the record in
9 this proceeding may not be as complete as possible. If Qwest is unable to comply with this deadline,
10 the date for filing Staff and Intervenor testimony may have to be extended, with corresponding
11 changes to the rest of the procedural schedule. Staff should file a request to extend the testimony
12 deadline no later than October 8, 2004, if it believes the information it receives by October 1, 2004, is
13 not sufficiently complete for Staff to file complete testimony.

14 The accelerated schedule in this proceeding vis-a-vis a traditional rate case, is straining the
15 discovery process. The schedule was set in an attempt to balance the competing interests in this case,
16 but may prove to be unrealistic given the number and importance of issues involved in this matter.

17 Subsequent to Staff filing its Motion, Qwest responded to one of the data requests to which it
18 had earlier objected. The remaining data request to which Qwest objects is UTI 11-14, in which Staff
19 asks Qwest to provide a detailed breakdown of QCII consolidated income tax expenses and cash
20 payments to the IRS for calendar years 2002 and 2003, including how such amounts are allocated to
21 subsidiaries. Qwest argues such information is not relevant as the amount of taxes paid by a parent
22 company on its consolidated tax return is not related to the intrastate regulated revenue requirement.
23 Staff argues the information sought is reasonable as Qwest's revenue requirement includes over \$100
24 million of income tax expense. The amount and allocation of income taxes is often an issue in rate
25 cases. We find that data request UTI 11-14 is reasonably calculated to lead to the discovery of
26 admissible evidence and that Qwest should file its response to UTI 11-14 by October 1, 2004.

27 Qwest's Cross-Motion seeks to limit Staff's discovery. Although some of the issues were
28 discussed at the September 27, 2004 hearing, the issues Qwest raised therein have not been

1 thoroughly briefed. We decline to impose such limits at this time, and expect that Staff, and other
2 interested parties will file a Response to Qwest's Cross-Motion by October 4, 2004.

3 Qwest Motion to Compel

4 At the September 27, 2004 Procedural Conference, Staff supported AT&T's position that its
5 depreciation rates were not relevant in this proceeding. Staff noted that AT&T's depreciation rates
6 are determined based on financial reporting requirements and cannot be compared to Qwest's
7 depreciation rates based on regulatory rate-making requirements.

8 In Decision No. 62507 (May 4, 2000), in which the Commission approved Qwest's projected
9 lives and depreciation rates, the Commission held "[a]dvancements in technology, coupled with the
10 desire to create robust competition in Arizona's telecommunications industry, warrants setting US
11 WEST's depreciation lives within the range of its competitors." Decision No. 62507, Conclusion of
12 Law ¶ 3. Thus, it appears that under certain circumstances the depreciation rates of competitors are
13 arguably relevant to the determination of appropriate rates for Qwest. AT&T and TCG have held
14 themselves out as competitors of Qwest in the past. Their recent decision to no longer compete in the
15 residential market by itself does not remove them from the set of possible Qwest competitors.

16 We find that in the event Qwest's depreciation rates becomes an issue in this case, the
17 information sought from AT&T is reasonably calculated to lead to the discovery of admissible
18 evidence. However, no decision is being made at this time regarding the relevance or admissibility of
19 such information. Thus, we find Qwest's offer of compromise reasonable. If Staff files any
20 testimony that places Qwest's depreciation rates at issue in this case, AT&T and TCG shall file a
21 response to Qwest's First Set of Data Requests, as it pertains to their plant used to provide service in
22 Arizona, within 10 business days after Staff's filing.

23
24 IT IS THEREFORE ORDERED that Qwest shall file responses to all overdue data requests
25 by October 1, 2004.

26 IT IS FURTHER ORDERED that Qwest shall respond to data request UTI-11-14 by October
27 1, 2004.

1 IT IS FURTHER ORDERED that AT&T and TCG shall respond to Qwest's first set of data
2 requests concerning their assets used to provide service in Arizona within ten business days of Staff
3 filing any testimony in this matter that places Qwest's depreciation rates at issue.

4 IT IS FURTHER ORDERED that Responses to Qwest's Cross-Motion shall be filed by
5 October 4, 2004.

6 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
7 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

8 DATED this 29th day of September, 2004.

9
10 *Jane L. Rodda* / *by Dwyer*
11 JANE L. RODDA
ADMINISTRATIVE LAW JUDGE

12 Copy of the foregoing mailed/delivered
13 this 29 day of September, to:

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