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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
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OCT - 4 2004

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8 IN THE MATTER OF QWEST CORPORATION'S  
9 FILING OF RENEWED PRICE REGULATION  
10 PLAN

Docket No. T-01051B-03-0454

11 IN THE MATTER OF THE INVESTIGATION OF  
12 THE COST OF TELECOMMUNICATIONS  
ACCESS

Docket No. T-00000D-00-0672

13  
14 **COMMISSION STAFF RESPONSE TO QWEST'S**  
15 **CROSS MOTION FOR THE IMPOSITION OF DISCOVERY**  
16 **LIMITATIONS UPON STAFF**

17 **I. INTRODUCTION**

18  
19 On September 24, 2004, in partial response to Staff's Motion to Compel Qwest Corporation  
20 ("Qwest") to respond to Staff discovery requests, Qwest filed a cross motion for the imposition of  
21 discovery limitations upon Staff. The Commission should reject Qwest's motion since it is nothing  
22 more than an attempt by Qwest to: (1) once again reargue the merits of having to submit a R14-2-103  
23 filing, and (2) prevent the Staff from being able to effectively investigate the many issues raised in  
24 this case and present its best recommendations to the Commission. Moreover, the Commission  
25 should keep in mind that it was Qwest that advocated for the accelerated schedule in this case and in  
26 so doing assured the Commission that it would do nothing to prevent the Staff from being able to  
27 meet its filing dates. Now in addition to not living up to its commitment to provide Staff with all the  
28 information it needs to process Qwest's application on the accelerated schedule set in this case,

1 Qwest's proposed limitation on Staff discovery would impede the Staff's overall ability to prepare  
2 and present its case to the Commission. For these reasons, the Commission should reject Qwest's ill-  
3 founded motion.

4 **II. DISCUSSION**

5  
6 **A. Qwest's Motion is Nothing More than a Thinly Veiled Attempt to Reargue the R-14-2-103 Filing Requirement**

7 Qwest argues that "the full rate case process sought by Staff is a vestige of monopoly  
8 regulation for traditional utility services that is inconsistent with a competitive marketplace". (Qwest  
9 Mo. at 7). Qwest goes on to argue that there is nothing in the Arizona Constitution that mandates the  
10 Commission to use a traditional rate case when dealing with the provision of competitive  
11 telecommunications services. Id. Similarly, Qwest argues that "Staff is preoccupied with Qwest's  
12 revenue requirement". Id. at 10. These are the exact same types of arguments made by Qwest  
13 several months ago which the Commission rejected when it ordered Qwest to make a R14-2-103  
14 filing. Qwest simply refuses to accept the Commission's earlier ruling. Qwest even concedes on  
15 page 7 of its motion, that it has repeatedly challenged Staff's attempts to treat this case as a "full rate  
16 case". It is the Commission that required Qwest to make a R14-2-103 filing; Qwest's refusal to  
17 accept this ruling forms much of the basis for its motion to limit Staff discovery.

18 Qwest also argues that a utility cost-of-service rate case and revenue requirement analysis  
19 would be appropriate if Qwest were seeking to recover the revenue requirement set forth in its  
20 A.A.C. R14-2-103 filing; however since it has not asked for recovery of the rates, its proposed  
21 revisions to the Price Cap Plan can be evaluated readily without reference to a revenue requirement.  
22 Id. at 10-11. Staff has explained innumerable times that Qwest is claiming a revenue deficiency of  
23 approximately \$322 million on original cost rate base and \$459 million on fair value rate base. See  
24 also, id. at 8. The revenue deficiency claimed by Qwest needs to be thoroughly tested for several  
25 reasons.

26 First, even though Qwest is under a Price Cap Plan, it is asking for significant modifications  
27 to its Plan which will give it much more pricing flexibility in the future. In order to determine the  
28

1 reasonableness of the modifications proposed by Qwest, it is necessary to test its claimed revenue  
2 deficiency, since this will determine in part the degree of flexibility that is appropriate. Qwest's  
3 proposed modifications are so extensive that they leave little of the original plan intact:

- 4 1) Elimination of the productivity/inflation adjustment mechanism;
- 5 2) Replacement of an indexed cap on Basket 1 services with a newly determined  
6 revenue cap;
- 7 3) Introduction of a "competitive zone" test for moving services out of Basket 1  
8 on a geographic basis;
- 9 4) Ability to move wholesale services to a competitive sub-basket within Basket  
10 2;
- 11 5) Elimination of the revenue cap on Basket 3 services; and,
- 12 6) Greater flexibility for Basket 3 services.

13 The Staff would be remiss, if in light of the significant modifications Qwest is requesting, it ignored  
14 the 134 pages of testimony filed by Qwest witness Philip Grate on the Company's dire financial  
15 circumstances and its claimed revenue deficiency. In addition, in order to comply with Arizona law,  
16 the revenue caps under the old plan and under any revised plan must be set using the Company's  
17 revenue requirement. While Qwest claims that the parties devised a streamlined method to consider  
18 renewal and revision of the Plan, Staff does not believe that the drastic nature of Qwest's proposed  
19 changes to the plan along with its claimed revenue deficiency, were ever intended to qualify for  
20 "streamlined" treatment.

21 Second, Qwest has said that if it does not get all of the modifications to the Plan that it is  
22 requesting, it may ask to go back to rate of return regulation. Thus, it is necessary that the Staff does  
23 its own investigation of the claimed revenue deficiency, so that in the event Qwest asks to return to  
24 rate of return regulation, the Commission will not be tied to Qwest's \$322 million, but rather will  
25 have the benefit of a neutral party's investigation as well. As the Commission well knows,  
26 oftentimes, the regulated utility will request an amount far in excess of what the Commission  
27 determines is actually just and reasonable.

28 Third, Qwest is asking to recoup at least \$64 million in Arizona Universal Service Funds  
("AUSF") and between \$2 to \$7 million in miscellaneous increases. This is in addition to the

1 significantly increased pricing flexibility under the Plan that Qwest is requesting which would allow  
2 it to recoup a lot more of the \$322 million, than that specifically requested, unless the revenue caps  
3 are tied to a predetermined revenue requirement.

4 The Commission should not be swayed by Qwest's attempts to "minimize" its requested  
5 modifications and rate changes. For instance, on pages 8-9 of its Motion, Qwest characterizes the  
6 changes it is requesting as merely "(1) revisions to the existing Price Cap Plan to make it work more  
7 effectively; (2) minor rate rebalancing that produced approximately \$2.3 million (net of a decrease in  
8 access charges) and (3) implementation of competitively-neutral universal service support for  
9 telephone subscribers located in high cost areas." Qwest would have the Commission believe that  
10 given the "miniscule" changes it is proposing, the Commission Staff should do no independent  
11 investigation. Rather, Qwest would have the Commission merely accept Qwest's claimed revenue  
12 deficiency and "minor rate rebalancing" proposals. For apparent reasons, the Commission should  
13 reject Qwest's "trust me" approach.

14 **B. Staff's Discovery to Qwest Has Been Reasonable and Is Not Excessive**  
15 **Considering the Number of Issues Raised in This Case and The Accelerated**  
16 **Schedule the Parties Are Operating Under**

17 Qwest erroneously claims that Staff's discovery has been excessive in this case. Qwest  
18 attempts to support its argument by making comparisons to the 1999 rate case. Such comparisons  
19 are meaningless for the following reasons.

20 First, this case is much broader than the 1999 case. Not only is the Commission addressing a  
21 claimed revenue deficiency of \$322 million and major modifications proposed by Qwest to its Price  
22 Cap Plan, but there are several other large issues in this case including: 1) access charges, 2)  
23 imputation, 3) the degree of competition faced by Qwest in its service territory, and, 4) Qwest's  
24 request for Arizona Universal Service Funds. All of these issues require significant discovery and  
25 examination by Staff and its consultants to respond to the proposals made by Qwest. Qwest makes it  
26 appear that Staff is only examining Qwest's claimed revenue deficiency in its discovery. This could  
27 not be further from the truth. A significant amount of Staff's discovery relates to: 1) the price cap  
28 plan itself, 2) the degree of competition in Qwest's service area, 3) imputation, 4) access charges, 5)  
rate design and 6) Qwest's request for AUSF.

1 Second, unlike the 1999 case this case is on an accelerated schedule. Qwest was the primary  
2 advocate of establishing a timeline that was far more accelerated than the traditional rate case.  
3 However, in exchange Qwest committed to not doing anything that would impede Staff's ability to  
4 meet its direct testimony filing deadline. Yet, as Staff has demonstrated, Qwest has not lived up to  
5 its commitment. Instead of providing Staff with its responses in the 10 day period as ordered by the  
6 Administrative Law Judge ("ALJ"), Qwest's average lag has approached an average of 30 days with  
7 respect to the outstanding requests of one of Staff's Consultants (Utilitech).<sup>1</sup>

8 While it is true as Qwest claims on pages 5-6 of its Motion, that it has repeatedly reiterated  
9 its willingness to work with Staff on these issues and to improve the response times to Utilitech data  
10 requests, the response times were getting progressively worse as Staff demonstrated in its Motion to  
11 Compel, requires immediate action on Staff's part. In addition, follow-up discovery is often times  
12 necessary. Therefore, while the Company may ultimately respond, a late response in the later stages  
13 of the case severely prejudices Staff's ability to do follow-up discovery.

14 Moreover, Qwest claims that the number of data requests in this case far exceed the number of  
15 requests in the 1999 case is misplaced. Despite the fact that this case is on an accelerated track, Staff  
16 has issued approximately 740 individually numbered data requests compared to 1495 individually  
17 numbered data requests in the 1999 case. Qwest also implies that all of the Staff discovery has  
18 resulted in a "system overload" which is unprecedented in Qwest's experience and has never  
19 previously occurred in any other rate cases conducted throughout Qwest's 14-state region. There can  
20 be only one reason for Qwest's "system overload" and it is not the amount of Staff discovery.  
21 Rather, Qwest is submitting many more of its responses in electronic format than ever before. If  
22 anything has resulted in a computer "system overload" it is Qwest's decision to submit as many of  
23 its responses as possible in electronic format, including all voluminous requests, which it has  
24 identified as anything over 100 pages. And, to the extent that Qwest has provided Staff with "well

25 \_\_\_\_\_  
26 <sup>1</sup> At page 6 of its Cross-Motion, Qwest states that the due dates for Qwest's responses to the Dunkel and Utilitech data  
27 requests shown on Exhibit B appended to Staff's Motion to Compel are inaccurate. While Staff believes the dates to be  
28 accurate, Staff notes that it oftentimes receives Qwest's responses by hand-delivery; while both Dunkel and Utilitech  
receive the responses by mail or federal express. Thus, some variance in response times may result from the method of  
delivery to Staff and its consultants. However, Qwest responses are not overdue by a day or two. Rather, the responses  
are typically overdue by a week or more.

1 over a half a million pages of documents and other information” (Qwest Motion at 4), most of this  
2 was provided on CD.

3 In summary, given the number of issues in this case, the fact that the scope of this case is far  
4 broader than the 1999 case and the accelerated schedule, Qwest’s complaints regarding the Staff’s  
5 discovery are baseless.

6 **C. Qwest’s Concerns Regarding Staff’s Management of Discovery Are Meritless**

7 Qwest identifies several additional concerns regarding Staff’s management of discovery  
8 which it argues support its motion for limiting Staff discovery in this case. Qwest claims on page 5  
9 of its motion that it raised a number of concerns regarding the “manner and method” in which Staff  
10 was conducting discovery which were not addressed, including but not limited to: 1) the unlimited  
11 number of requests; 2) the scope of requests; 3) service of requests from multiple Staff sources  
12 without coordination; 4) special requests relative to particular formats, copies, confidential  
13 information, etc.; and 5) the timing of service of Staff discovery to effectively reduce Qwest’s time  
14 for response.

15 Staff will respond to each of these concerns in turn. First, Staff does not believe it is engaging  
16 in “unlimited discovery”. Staff does not have time to engage in meaningless discovery. Moreover, if  
17 Staff was engaging in meaningless discovery, Qwest always has the right to object on relevance  
18 grounds. Yet, it is telling that with respect to the outstanding discovery requests at the time Staff  
19 brought its motion to compel, Qwest had only objected to two (2) of Utilitech’s outstanding data  
20 requests. Even more revealing is the fact that Utilitech discovery has identified numerous corrections  
21 and revisions Qwest has agreed to make to its own filing, with sixteen of such revisions identified and  
22 summarized in the response to Data Request UTI 7-02, Attachment A.

23 Second, the scope of Staff’s and its Consultant’s requests has always been focused on  
24 obtaining information likely to lead to admissible evidence. Again, had Staff’s requests been too  
25 broad in scope or irrelevant to the issues raised in this case, Qwest had the right to object to the  
26 requests on that basis. It did not, and therefore, its raising this objection now is untimely. Qwest  
27 raises two specific issues with respect to scope in its motion. Qwest points to the discovery being  
28 done by Utilitech on Qwest’s claimed revenue deficiency as being beyond the scope of this

1 proceeding. Staff has already responded why such information is highly relevant to the issues raised  
2 in this case. Qwest also points to the discovery Staff has issued on depreciation. Qwest argues that it  
3 did not file for a change in its depreciation lives. Qwest did, however, file to change one of the  
4 inputs to its depreciation rates. Therefore, it is reasonable for Staff to look at the other inputs to  
5 ensure that they continue to be appropriate as well.<sup>2</sup>

6 Third, as in prior cases, Staff and its Consultants have sent their own data requests primarily  
7 to conserve time and expedite processing of the requests. Particularly where as here, there is an  
8 accelerated schedule that the parties are operating under, Staff attempts to utilize streamlined  
9 procedures (including direct transmission and dissemination procedures) which will allow it to obtain  
10 the responses more quickly and with less confusion. If Staff were to institute the type of process  
11 suggested in Qwest's motion, Staff would have to designate one point person through whom all  
12 discovery would be transmitted and disseminated. While this may seem like a workable process, it  
13 actually in practice does not work as well and slows the whole discovery process down. Such a  
14 process would be burdensome on the Staff "gate-keeper" or point person and it is likely that the point  
15 person would become a bottleneck at some point in time. It is also much more difficult for one  
16 person to keep track of who on Staff's team the requests need to be disseminated to and we believe  
17 confusion would be introduced in the dissemination process if the direct approach that Staff utilizes  
18 were not used. Furthermore, each member of Staff's team has discrete topics to which they are  
19 assigned, making any overlap or duplication unlikely.

20 Fourth, Qwest tries to create an inaccurate impression that it is receiving all sorts of special  
21 requests relative to particular formats, copies, confidential information etc. and that this is very  
22 burdensome and has slowed down its response times. This simply is not the case. While Qwest has  
23 been accommodating to some extent, it has also for the most part steadfastly adhered to its own  
24 definition of "voluminous" (100 pages or more) which dictates whether it will send a document in  
25

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26 <sup>2</sup> On the other hand, Qwest also complains that Staff did not conduct any discovery before it made its R14-2-103 filing.  
27 Qwest Mo.at 4. There was no need for Staff to begin discovery before the Company made its R 14-2-103 filing. In  
28 addition, between the date of the Company's filing and the date of Staff issuance of its sufficiency letter, Staff was busy  
identifying areas in need of correction or augmentation by the Company. In not commencing discovery prematurely and  
in identifying areas for the Company in its filing in need of further work, the Staff was actually attempting to focus its  
discovery on which was necessary.

1 hard copy or not. Contrary to Qwest's suggestion that Staff did not respond to its concerns, Staff has  
2 tried throughout this case to come up with workable guidelines for Qwest's responses. We have  
3 limited the number of hard copies provided to the Legal Division and the Staff person or consultant  
4 sending the request. For voluminous documents, the Staff has made an exception for Qwest, that  
5 confidential information may be supplied on CD.

6 Fifth, Qwest apparently believes that Staff is conspiring to reduce Qwest's time for response  
7 by timing its discovery to come out on Fridays. This is simply not the case; in fact one of Staff's  
8 consultants, Utilitech, examined this assertion by Qwest to determine whether there was any truth to  
9 it. With respect to its data requests, it found that more times than not, the requests were issued in the  
10 middle of the week, rather than on Fridays.

11 Qwest also points out that Staff has made several site visits to Denver and Phoenix and that  
12 Staff obtains additional information as a result of these visits. Staff has traditionally utilized the site  
13 visits referred to by Qwest to expedite the gathering of information in select areas. Rather than send  
14 out a barrage of data requests on a particular topic, Staff will include certain subject areas in a site  
15 visit if that seems more appropriate and likely to expedite the gathering of information on the topic.  
16 Staff also employs site visits for issues identified by Qwest as being too burdensome to respond to in  
17 a data response. Thus, these types of visits are for the benefit of both Staff and the Company.

18 Finally, Qwest also cites to a litany of problems it claims it has experienced with particular  
19 data requests of Staff and its consultants. See Qwest Mo. at 13. For instance, Qwest claims that Staff  
20 issues multiple data requests for the same information. At times, when Staff finds Qwest's response  
21 to be non-responsive, Staff will attempt to get at the information in another manner. Other times,  
22 Staff has asked for information that has been supplied to another party. In those instances, Staff has  
23 told Qwest to attach the response given to the other party, to its response to Staff's data request.  
24 Qwest also complains that Staff will ask for information outside the test year or that relates to services  
25 outside of Arizona. Id. Oftentimes when information outside the test year is requested it is to  
26 determine the reasonableness of the test year information. The same may be true of services provided  
27 outside of Arizona; the Staff desires to obtain a comparison of how reasonable the treatment is  
28 compared to services offered inside Arizona.

1 Finally, Qwest's comparison to civil discovery is simply not valid. Civil discovery does not  
2 typically involve what amounts to an audit of the Plaintiff's financial status or regulatory financial  
3 requirements. There is no legitimate comparison to be made to civil discovery.

4  
5 **D. Qwest's Proposal To Limit Staff's Discovery Is Arbitrary, Unworkable and**  
6 **Should Be Rejected**

7 In an unprecedented request, Qwest asks that Staff's discovery be limited in this case. Qwest  
8 makes this request despite the fact that this case is occurring at a critical juncture in time with regard  
9 to the development of competition in Arizona telecommunications markets; that there are a significant  
10 number of important issues being addressed in this Docket; and that the results of this case will likely  
11 govern Qwest's provision of service for at least the next three years.

12 It would be inappropriate to limit Staff's discovery as requested by Qwest. The Staff must be  
13 able to obtain the information it needs in order to make informed recommendations to the  
14 Commission on the issues raised. Staff knew at the commencement of this case, with the accelerated  
15 schedule, that this would be a very burdensome, resource intensive process for everyone, not just  
16 Qwest. Yet, Staff accepted this, and it has only been its inability to obtain timely responses from  
17 Qwest that has hampered its ability to obtain the information it needs to present its case.

18 Staff needs the ability to conduct the discovery it believes necessary throughout the remainder  
19 of this case in order to make its best recommendations to the Commission. Qwest will be filing  
20 another round of testimony after Staff files its direct testimony. Staff needs to be able to conduct  
21 discovery as it deems fit and necessary on Qwest's future filings.

22 As for Qwest's suggestions that there are continuing and pervasive problems with Staff's  
23 discovery, it is telling that they have issued very few objections overall to any of Staff's and its  
24 consultant's questions, and have recently managed to accelerate responsiveness when subject to a  
25 pending Staff motion to compel..

26 ...

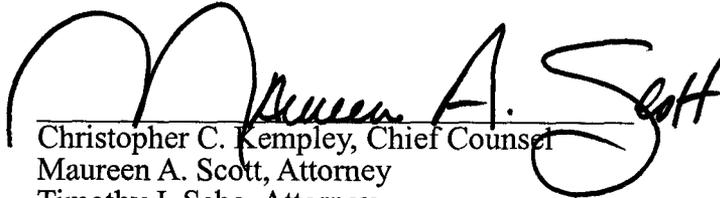
27 ...

28 ...

1 **III. CONCLUSION**

2 For all of the reasons discussed above, the Commission should reject Qwest's Motion to  
3 Limit Staff's discovery in this case.

4  
5 RESPECTFULLY submitted this 4<sup>th</sup> day of October, 2004

6  
7 

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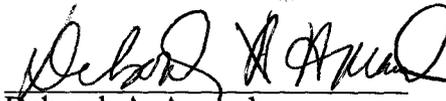
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