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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

**MOTION FOR DETERMINATION OF CONFIDENTIALITY REGARDING
SECTION 272**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby request that the Arizona Corporation Commission ("Commission") review the Affidavit of Cory W. Skluzak on behalf of AT&T regarding section 272 and the information contained therein designated as proprietary and, consistent with the Telecommunications Act of 1996 ("Act") and the Federal Communications Commission ("FCC") implementing orders, find that the proprietary information contained in paragraphs 35, 45, 50, 76-78, 85, 88-89, 91-93, 96, 101, 103-104, 106, 121 and 125 should be made part of the public record.

I. INTRODUCTION

Qwest permitted AT&T to conduct on-site reviews of materials related to transactions between Qwest Corporation and the former U S WEST Communications, Inc. (the Bell operating company, or BOC) ("Qwest"), Qwest Long Distance, formerly

U S WEST Long Distance ("Qwest LD"), and Qwest Communication Corporation ("QCC"), the section 272 affiliates.¹ The documents provided to AT&T during these on-site reviews were marked confidential and proprietary.

AT&T used a number of these proprietary documents to prepare its Affidavit, and the proprietary information is contained in the Affidavit and appropriately marked. Until the Commission rules on AT&T's Motion, AT&T will maintain the confidentiality of the information cited in its Affidavit.

AT&T believes that the information designated as confidential and proprietary by Qwest appropriately should be made part of the public record based on the Act and the FCC's orders. AT&T files this Motion because it believes legal precedent supports its Motion, and it does not do so lightly or in an attempt to divulge Qwest's trade secrets.

II. ARGUMENTS

The information AT&T seeks to make public is related to transactions between Qwest and its section 272 affiliates -- Qwest LD and QCC. Section 272 is explicit:

The separate affiliate required by this section--...(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with such transactions reduced to writing and available for public inspection.

The Act is clear that all transactions must be available for public inspection.

The FCC promulgated rules implementing section 272(b)(5).² The FCC requires BOCs and section 272 affiliates to post to the company's home page on the Internet

¹ U S WEST Communications, Inc. was renamed Qwest Corporation and U S WEST Long Distance was renamed Qwest Long Distance. Qwest Communications Corporation is a long distance subsidiary of Qwest International, Inc. that pre-dated the merger and in 2001 was identified as a new section 272 affiliate.

² *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. Dec. 24, 1996) ("*Accounting Safeguards Order*").

within 10 days of the transaction, a detailed written description of the asset or service transferred and the terms and conditions of the transaction.³ “[T]he description of the asset or service and the terms and conditions of the transaction should be sufficiently detailed to allow [the FCC] to evaluate compliance with [the FCC’s] accounting rules. This information must also be made available for public inspection at the principal place of business of the BOC.”⁴ In its *Ameritech Michigan Order*, the FCC confirmed these obligations⁵ and made clear that the posting must disclose actual rates.⁶

In the *BellSouth Louisiana II Order*, the FCC made clear summaries of the transactions with the section 272 affiliate are not sufficient.⁷

The final contract price alone is not sufficient for evaluating compliance. Instead, such disclosures should include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions. For asset transfers, BellSouth should disclose the appropriate quantity and, if relevant, the quality of the transferred assets. For affiliate transactions involving services, BellSouth should disclose the number and type of personnel assigned to the project, the level of expertise of such personnel, any special equipment used to provide the service, and the length of time required to complete the transaction. BellSouth should also state whether the hourly rate is a fully-loaded rate, and whether or not that rate includes the cost of materials and all direct or indirect miscellaneous and overhead costs, so that we can evaluate compliance with our accounting safeguards.⁸

The FCC also made clear the purposes of the required disclosures: “BellSouth’s failure to disclose the rates charged for certain services makes it impossible for an unaffiliated

³ *Id.*, ¶ 122.

⁴ *Id.*

⁵ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997), ¶ 363.

⁶ *Id.*, ¶ 369.

⁷ *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271, (rel. Oct. 13, 1998), ¶ 337.

⁸ *Id.*

third party to make informed purchasing decisions, and falls short of providing the information needed to assure compliance with our accounting rules.”⁹ Although it may be the FCC that must ultimately determine if the BOC is complying with the accounting rules, if information remains proprietary, an interested carrier cannot point out noncompliance or complain about a BOC’s failure to comply with the FCC’s accounting rules. The interested party would be unable to tell it is being discriminated against. Furthermore, the unaffiliated third party cannot make “informed purchasing decisions” if the information regarding transactions between Qwest and its section 272 affiliate remains proprietary and inaccessible.

III. CONCLUSION

The Act, the FCC’s orders and the purposes underlying the Act and orders, justify disclosure of the proprietary information contained in Mr. Skluzak’s affidavit. Any other decision would allow Qwest to maintain a veil of secrecy over its dealings with its section 272 affiliates. AT&T respectfully requests that AT&T’s Motion be granted.

Dated this 15th day of June 2001.

Respectfully submitted,

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

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⁹ *Id.*

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Motion for Determination of Confidentiality Regarding Section 272 in Docket No. T-00000A-97-0238 were sent by overnight delivery on June 15, 2001 to:

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