



BEFORE THE ARIZONA CORPORATION COMMISSION

2006 APR 20 P 4: 12

JEFF HATCH-MILLER
Chairman

WILLIAM A. MUNDELL
Commissioner

MARC SPITZER
Commissioner

MIKE GLEASON
Commissioner

KRISTIN K. MAYES
Commissioner

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE FORMAL)	DOCKET NO. T-03693A-05-0875
COMPLAINT AND REQUEST FOR)	T-01051B-05-0875
DECLARATORY JUDGMENT OF PAC-)	
WEST TELECOMM, INC. AGAINST QWEST)	RESPONSE TO QWEST
CORPORATION)	CORPORATION'S MOTION TO
)	COMPEL RESPONSE TO DATA
)	REQUESTS
)	

Pac-West Telecomm, Inc. ("Pac-West") hereby responds to Qwest Corporation's ("Qwest") Motion to Compel Response to Data Requests ("Motion"). For the reasons set forth below, Qwest's Motion should be denied.

I. Introduction

Qwest's Motion to Compel is unwarranted, unnecessary and inappropriate.

Arizona Rule of Civil Procedure 37(a)(2)(C) provides as follows:

No motion brought under this Rule 37 will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

Pac-West requested that Qwest discuss the data requests, but Qwest refused. The request came less than one week after the responses and objections were received by Qwest, and was made in response to Qwest's proposal to discuss both the data requests and the responses. To date, the parties still have not discussed Pac-West's responses and objections. Moreover, a review of the short history of this discovery dispute indicates that Qwest's refusal to meet and confer is unreasonable, and its Motion premature. The Commission therefore need not reach the merits of Qwest's Motion, because Qwest has not met the basic procedural prerequisites to filing such a motion.

Qwest served the data requests on March 22, 2006. With Qwest's concurrence, Pac-West submitted timely responses and objections eight business days later, on Monday, April 3, 2006. By letter sent electronically on April 4, 2006, Qwest objected to Pac-West's responses and objections, and proposed that the parties "jointly discuss how to phrase the questions in a manner acceptable to both parties." Qwest also indicated that it was willing to "discuss whether the requests could be stated more narrowly and still serve our needs." *See* Motion Exhibit C. Qwest concluded by asking Pac-West to respond by April 10, 2006.

Pac-West responded that it was willing and available to discuss the data requests and responses. *See* Exhibit 1. Qwest received this letter from counsel for Pac-West *before* it filed its Motion to Compel. (An internet service interruption and the Immigrants Rights March in Phoenix prevented hand-delivery on April 10, but the letter was

postmarked the 10th and sent electronically to Qwest on the morning of April 11.¹) The email exchange attached as Exhibit 2, which also occurred before Qwest filed its Motion, clearly shows that Pac-West was – and remains – willing to meet its obligation under Rule 37(a)(2)(A) to discuss the requests and objections and to narrow the areas of disagreement if possible. Qwest, however, has been unwilling to discuss whether the requests could be narrowed or restated, or whether particular responses were adequate.

II. Argument

Motions filed with the Arizona Corporation Commission “shall conform insofar as practicable with the Rules of Civil Procedure for the Superior Court of the state of Arizona.” A.A.C. R14-3-106(K). Additionally, in “all cases in which procedure is set forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Supreme Court of the state of Arizona shall govern.” R14-3-101(A). Under Ariz. R. Civ. P. 37(a)(2)(C), Qwest is required to meet and confer to make “good faith efforts” to resolve disputes after data requests are served and *before* a motion to compel may be filed. This meet-and-confer obligation allows parties to refine and narrow such requests, and to reach agreement on as many issues as possible. A litigant’s refusal to meet, or to make good faith efforts to resolve discovery disputes, prolongs and increases the costs of litigation, and amounts to an abuse of the discovery process.

¹ During the same period, counsel for Pac-West notified counsel for Qwest that she would be out of the office on vacation between April 7 and April 10.

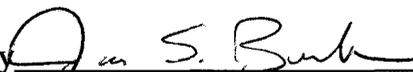
The wisdom of attempting first to resolve (or narrow) disputes informally is also manifested in the procedural guidelines provided by the Administrative Law Judge in this docket. The ALJ's March 1, 2006 procedural order provides: "in the alternative to filing a written motion to compel discovery, any party seeking discovery may telephonically contact the Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery dispute . . ." Procedural Order, p. 2. Written discovery disputes are costly, time-consuming, and ill-advised when the parties to the dispute have not yet walked through the issues to refine and prioritize the areas of disagreement. Pac-West is willing to discuss and narrow these issues before they are brought to the ALJ for resolution.

III. Conclusion

Qwest's Motion to Compel should be denied, and Qwest should be ordered to discuss with Pac-West the data requests and Pac-West's responses and objections.

Respectfully submitted this 20th day of April, 2006.

OSBORN MALEDON PA

By  _____

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Attorney for Pac-West Telecomm, Inc.

Original and fifteen (15) copies of
the foregoing were filed this 20th day of
April, 2006, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copies of the foregoing hand-delivered this
20th day of April, 2006, to:

Amy Bjelland
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing mailed this 20th day of
April, 2006, to:

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April 14, 2006

Norman G. Curtright
Corporate Counsel
Qwest
4041 North Central Avenue, 11th Floor
Phoenix, Arizona 85012

Re: *Pac-West Telecomm, Inc. v. Qwest Corporation*
Docket Nos. T-03639A-05-0875
T-01051B-05-0875

Dear Norm:

This letter responds to your letter date April 4, 2006, regarding Pac-West Telecomm's responses and objections to Qwest's First Set of Data Requests. I do not intend by this letter to turn up the volume on this disagreement, thus I will say only that Pac-West does not agree that its responses and objections are unacceptable. Pac-West would be confident defending its responses and objection to the Administrative Law Judge handling this matter.

You have, however, suggested that Pac-West and Qwest engage in "a discussion to more closely define the requests" and that we "discuss whether the requests could be stated more narrowly." We believe that this makes sense. Pac-West Telecomm representatives would be willing to meet with Qwest this week by conference call to discuss the Qwest data requests and the Pac-West responses and objections. Please give me a call when you know when Qwest representatives would be available for such a call.

Sincerely,

A handwritten signature in cursive script that reads "Joan S. Burke".

Joan S. Burke

JSB/bw

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Burke, Joan

Subject: FW: Pac-West v Qwest (DTT Complaint)

-----Original Message-----

From: BLACK, PATRICK [mailto:PBLACK@FCLAW.com]
Sent: Tuesday, April 11, 2006 10:15 AM
To: Burke, Joan; Curtright, Norm
Cc: Nodland, Jeff; Weinstein, Robert
Subject: RE: Pac-West v Qwest (DTT Complaint)

Joan -

With all due respect, Qwest has met its obligation to work through these issues. Discovery cut off is April 14. The Motion to Compel is being filed today, unless I hear otherwise from Qwest.

Patrick

From: Burke, Joan [mailto:jburke@omlaw.com]
Sent: Tuesday, April 11, 2006 10:08 AM
To: Curtright, Norm
Cc: BLACK, PATRICK; Nodland, Jeff; Weinstein, Robert
Subject: RE: Pac-West v Qwest (DTT Complaint)

Norm:

Pac-West believes that such a motion would be unwise as it would likely delay, rather than advance, resolution of this dispute. Pac-West is making a good faith effort to consult with Qwest on the requests, responses and objections. Qwest has an obligation under Ariz. R. Civ. Pro 37(a)(2)(C) to make an effort to work through these issues before filing a motion to compel.

Joan.

-----Original Message-----

From: Curtright, Norm [mailto:Norm.Curtright@qwest.com]
Sent: Tuesday, April 11, 2006 9:41 AM
To: Burke, Joan
Cc: BLACK, PATRICK; Nodland, Jeff; Weinstein, Robert
Subject: RE: Pac-West v Qwest (DTT Complaint)

Joan,

Thank you for your reply. You state that Pac-West is willing to do exactly what was requested in my April 4th letter. In point of fact, our April 4th letter asked for production of the data originally requested. While we did offer to hear what Pac-West might have to say about how it can best reply, and discuss whether something short of, or different from, a totally compliant response will be acceptable, and gave Pac-West 4 business days to respond, we have not received any answers or any alternative proposals. Your offer to discuss things in conference call could have been made long before yesterday.

Since we are against a discovery cut off, and do not have any clear picture of what Pac-West is willing to produce, we will go ahead and file the Motion to Compel.

From: Burke, Joan [mailto:jburke@omlaw.com]

4/19/2006

Sent: Tuesday, April 11, 2006 9:11 AM
To: Curtright, Norm
Cc: BLACK, PATRICK; Nodland, Jeff; Weinstein, Robert
Subject: RE: Pac-West v Qwest (DTT Complaint)

Norm --

Our internet connection was down yesterday afternoon, but the attached letter went out to you in the mail. The Motion to Amend the Complaint will be filed today. (Filing yesterday was not possible due the march.) You may file the Motion to Compel, but Pac-West will respond that such a motion is not reasonable given Pac-West's willingness to do exactly what you requested in your April 4th letter.

Joan.