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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation 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

AT&T'S MOTION FOR JOINDER
OF PERSONS NEEDED FOR JUST
ADJUDICATION

AT&T of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T")
move to join several persons in the above referenced proceedings because the persons are
necessary for the just adjudication of the cases.

I. INTRODUCTION

In the access proceeding AT&T submitted a number of data requests to Qwest.
AT&T 01-001 to AT&T 01-028. Qwest responded to a number of requests that the
information is in the possession of affiliates.¹ AT&T sent a set of discovery requests to
Qwest asking the name of the affiliates. AT&T 02-001 to AT&T 02-022. Qwest

¹ AT&T filed a related Motion to Compel against Qwest to obtain information Qwest objected to providing
in response to AT&T's first set of data requests. That motion has not been argued nor ruled on yet.

identified the carriers as Qwest Communications Corporation and Qwest LD Corp. These companies are Qwest's section 271 long distance affiliates. AT&T hereby seeks to make these two carriers parties to the access and price cap plan proceeding.

II. ARGUMENTS

A. **Background**

On or about October 24, 2003, AT&T served its First Set of Data Requests on Qwest. AT&T received Qwest's responses on November 7, 2003.

Based on Qwest's responses, it appears that Qwest seeks to limit the scope of the access case to the rates it charges for switched access. However, the scope of the issues is much broader, especially since the Commission has combined the access proceeding and the price plan proceeding. AT&T maintains these proceedings are about the appropriate level of Qwest's switched access rates and whether Qwest's current or proposed rates for intraLATA and interLATA toll services put the interexchange carriers ("IXCs") in a price squeeze. The questions AT&T asked, and the questions Qwest objected to, seek information relevant to the issue of Qwest's cost of providing interexchange *services*² in Arizona, not just Qwest's rate for switched access. With the information AT&T has requested it can determine whether Qwest is providing, or based on any proposed rate for switched access whether Qwest would be providing, interexchange service at prices less than its imputed cost, or the price floor.

In its objections to AT&T's data requests, Qwest argued that AT&T seeks information that is not relevant to the cost of telecommunications access and is therefore

² Interexchange service as used herein means Qwest's intraLATA and interLATA toll services.

not reasonably calculated to lead to the discovery of admissible evidence in this docket. AT&T believes the requests seek information well within the scope of the proceeding.

Qwest is offering a rate for intrastate toll calls of \$.05 per minute. The average rate for switched access in Arizona is \$.033. This means that the access cost to AT&T for an intrastate call is \$.066 for a call requiring AT&T to pay originating and terminating switched access. The cost of switched access alone is above the \$.05 per minute rate Qwest is charging. The \$.066 cost does not include any other tariffed rates for services and non-tariff costs that Qwest must impute per Commission rules. R14-2-1310(C).

AT&T raised two issues in the public interest phase of the Section 271 proceeding – high switched access charges and the possibility of a price squeeze if access charges are not lowered before Qwest enters the in-region interLATA long distance market.³ At the special open meeting held on September 19, 2003, Chairman Spitzer addressed AT&T's filing. Chairman Spitzer found the AT&T comments "compelling," and the Commission voted to move the issue to the access proceeding. Docket No. T-00000A-97-0238, TR 98 & 123-124 (Sept. 19, 2003).

Although Qwest and Staff in the past have advocated that switched access charges should be reduced to interstate levels, there is no certainty the Commission will ultimately decide to reduce switched access rates to interstate levels.⁴ Therefore, it is imperative that evidence be presented regarding Qwest's costs of providing interexchange service in order to establish a price floor for Qwest's interexchange rates. Furthermore, reducing switched access rates alone will not prevent Qwest's ability to squeeze other competitors. The rates that are established for interexchange service must

³ A decision was released by the Federal Communications Commission on Qwest's application on December 3, 2003, granting Qwest section 271 relief.

⁴ The interstate switched access rate is \$.0055 per minute.

be above the price floor. Therefore, AT&T must have the information to put on a case regarding the price floor for Qwest's interexchange service based on Qwest's costs of providing interexchange services. *See* R14-2-1310(c).⁵

Qwest markets its long distance affiliate's interLATA services. It bundles local, intrastate and interstate services in one offering. Qwest objected to a large number of AT&T data requests, asserting in its objections that the requests sought information regarding Qwest affiliates: "Qwest further objects to this request as it pertains to its affiliates on the grounds that these affiliates are not parties to this proceeding."⁶

The Commission recently combined phase 1 of the access proceeding and Qwest's price cap plan proceeding. Procedural Order dated November 17, 2003. The Commission will be reviewing all of Qwest's rates. Qwest has argued that any access reductions must be revenue neutral. The Commission must review the cost of all Qwest's services in conjunction with any access rate reductions to determine what, if any, rates must be adjusted.

B. AT&T's Request

Qwest obtained certificates of convenience and necessity for several long distance affiliates -- Qwest Communications Corporation dba Qwest Long Distance ("QCC") (Decision No. 66612) and Qwest LD Corporation dba Qwest Long Distance ("QLD") (Decision No. 66613).

Based on statements made by Qwest, QCC and QLD have information in their possession that is necessary to determine the cost of interexchange service and the price

⁵ The Commission ordered that originating access shall be considered an essential facility for purposes of R14-2-1310(c). Opinion and Order, Decision No. 63487 (March 30, 2001).

⁶ Under the provisions of the Telecommunications Act of 1996, Qwest is required by law to provide in-region, interLATA services through an affiliate. 47 U.S.C. § 272(a).

floor for the rates Qwest charges for interexchange service. Furthermore, there is no way of determining in advance what other information is in QCC and QLD's possession that will be necessary to effectively resolve the issues in the access and price cap plan proceedings.

The Commission's rules shall govern in all cases before the Commission. R14-3-101(A). In all cases where the Commission's rules or orders do not address a procedural issue, the Rules of Civil Procedure for the Superior Court of Arizona as established by the Arizona Supreme Court apply. *Id.*

Rule 19(a) states:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if 1) in the person's absence complete relief cannot be accorded among those already parties, ... If the person has not been so joined, the court shall order that the person be made a party.

QCC and QLD are subject to the jurisdiction of this Commission. Qwest stated that necessary information is in the possession of QCC and QLD. AT&T believes that in the absence of QCC and QLD, complete relief cannot be afforded to AT&T and the other IXCs. Furthermore, by making QCC and QLD parties, the Commission will avoid the delay caused by information being in the possession of regulated public service corporations that are not parties to the proceeding. Therefore, QCC and QLD should be made parties to the access and price cap plan proceedings.

III. CONCLUSION

Qwest has stated that information relevant to the cost of interexchange service is in the possession of affiliates. Qwest has demonstrated in response to discovery that it

will use the corporate structure mandated by section 271 of the federal Act to prevent the discovery of relevant information. To avoid any delay and to permit prompt access to relevant information controlled by QCC and QLD, AT&T respectively requests that QCC and QLD be made parties to the access and price cap proceedings.

Submitted this 27th day of February, 2003.

**AT&T COMMUNICATIONS OF THE
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CERTIFICATE OF SERVICE

(Docket No. T-01051B-03-0454, T-00000D-00-0672)

I certify that the original and 15 copies of AT&T's Supplemental Comments on AT&T's Motion to Compel and AT&T's Motion for Joinder of Persons Needed for Just Adjudication were sent by overnight delivery on February 27, 2004 to:

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