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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

Arizona Corporation Commission

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WILLIAM MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

NOV 14 2002

AZ CORP COMMISSION DOCUMENT CONTROL

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IN THE MATTER OF THE GENERIC)
 INVESTIGATION INTO U S WEST)
 COMMUNICATIONS, INC.'S COMPLIANCE)
 WITH CERTAIN WHOLESALE PRICING)
 REQUIREMENTS FOR UNBUNDLED)
 NETWORK ELEMENTS AND RESALE)
 DISCOUNTS)

DOCKET NO. T-00000A-00-0194

OPPOSITION OF AT&T TO QWEST REQUEST FOR EXPEDITED CLARIFICATION OF PROCEDURAL ORDER

AT&T Communications of the Mountain States, Inc., and TCG Phoenix (collectively "AT&T") provide the following opposition to the "request" of Qwest Corporation ("Qwest") for an expedited clarification of a Procedural Order issued on May 9, 2002 ("May 9 Procedural Order"), relating to the updated processing of customer location and line count data performed by TNS Telecoms ("TNS"). The May 9 Procedural Order was issued over six months ago, and the Commission subsequently issued a final decision based on the information provided in compliance with that Order. The time for any request for clarification of the May 9 Procedural Order has long passed. Qwest, moreover, does not legitimately ask for clarification of that order but actually seeks an order effectively compelling a third party to provide additional services to Qwest without charge. The Commission should deny Qwest's request and should require Qwest to comply with the terms of the order, specifically to pay TNS the remaining \$10,000 that Qwest owes TNS for its share of the processing costs without further condition.

BACKGROUND

The May 9 Procedural Order arose out of the Commission's acceptance of Qwest's argument that line count, customer location, and comparable data used in the HAI model should be from the same (and most recent) time period. Before adopting the Initial Order in Phase II of this proceeding, the Commission required Qwest to provide customer location data for the year 2000, which was then to be processed and included in a revised model run. AT&T understood the Commission to require that the data be processed by the same vendor (TNS) using the same methodology as the prior data had been processed. Because the vendor charges for such data processing, AT&T further understood that Qwest, as the party proposing the additional data processing, should be responsible for those costs, but AT&T was willing to pay a share of those costs. Qwest, on the other hand, proposed to use its own vendor to process the data and refused to pay for TNS data processing.

The May 9 Procedural Order resolved the parties' dispute. The Administrative Law Judge concluded that the Commission's intent was to change only the vintage of the data, not how or by whom that data was processed and included in the model. The ALJ further accepted AT&T's proposal on cost sharing, directing that TNS's data processing charges be divided between AT&T (and WorldCom) and Qwest.

Following issuance of the May 9 Procedural Order, Qwest provided its 2000 customer location data to TNS, TNS processed that data as it had processed the prior data, and the processed data was included in a revised model run. On May 24, 2002, Qwest filed a "Brief Relating to the TNS-Based Revised Run of the HAI Model," in which Qwest took issue with the results and with how TNS processed the data. In addition to identifying specific problems that Qwest had with the results, Qwest claimed that TNS had not provided sufficient information

about what it had done and that even when TNS provided such information, “Qwest will have to review and analyze the data and conduct extensive depositions of TNS personnel to determine exactly how the clustering was done and whether it faithfully recreated the process used with the 1997 data.” Qwest Brief at 7. AT&T filed its Response on May 29, 2002, explaining that TNS processed the Qwest 2000 customer location data in the same manner as TNS processed the 1997 data in the initial model run and that the problems that Qwest identified were created by the poor quality data that Qwest had produced.

The Commission rejected Qwest’s concerns and adopted the results of the May 24, 2002 revised HAI model run, including the 2000 customer location data processed by TNS, to determine loop costs. Phase II Opinion and Order at 24-25 (June 12, 2002). Qwest repeated its arguments in its July 2, 2002, Application for Rehearing of the Commission’s Order. Qwest has also raised these same issues in its subsequent federal district court complaint challenging the Commission’s Order.

In the meantime, Qwest has refused to pay its share of the data processing fees charged by TNS as ordered in the May 9 Procedural Order. Qwest paid \$5,000 of the \$15,000 that Qwest owes TNS in early September 2002 – over three months after TNS completed the data processing and four months after the Commission ordered Qwest to share the costs of that processing – but Qwest refuses to pay TNS the remaining \$10,000 until TNS provides more information. TNS provided Qwest with the same service, information and data that TNS provided to the other parties in this docket and that TNS has provided in conjunction with similar data processing in the past. TNS has offered to provide Qwest with the additional service that Qwest has requested under a separate engagement, Qwest Request, Ex. B at 1, but Qwest continues to insist that it is entitled to additional service from TNS at the price that Qwest

currently is obligated to pay.

DISCUSSION

1. Qwest's Request Is Untimely.

Qwest requests "clarification" of a procedural order with which all parties have long ago complied and which effectively has been superceded by a Commission final order. The May 9 Procedural Order required the parties to use (and pay) TNS to process the 2000 customer location data that Qwest provided and include that processed data in a revised HAI model run. TNS processed the data, the data was included in a May 24, 2002, revised HAI model run, and the Commission approved the resulting cost estimates in its June 12, 2002 final order. Phase II of this docket was concluded with that final order, and none of the procedural orders entered prior to, and thus superceded by, that final order properly are or could be subject to any additional "clarification."

Qwest nevertheless contends that it needs additional information "to understand what process was undertaken by TNS in calculating the data and, thereby, evaluate that data for purposes of appeal and further proceedings in this docket." Qwest Request at 3. The alleged need to prosecute its appeal of the Commission's final order does not justify Qwest's request that the Commission clarify a prior procedural order. To the contrary, any appeal must be based on the record compiled by the Commission up to and including the final order, not on additional information gathered independently by Qwest from a third party after the case is concluded. Qwest also fails to identify any "further proceedings in this docket" to which the information it requests would be relevant. No such proceedings exist,¹ but even if that were not the case, a

¹ AT&T is unaware of any issue remaining to be resolved in this proceeding to which additional information on TNS data processing would be relevant and strongly opposes any attempt by Qwest to relitigate the reliability of TNS or the data processing it has performed. Commissioner

motion for clarification of a superceded procedural order in Phase II is not the appropriate vehicle for obtaining information from a third party to be used in a later phase. Qwest should obtain such information under the separate engagement that TNS has offered, not attempt to use this Commission to strong-arm TNS into providing Qwest with free services.

The Commission has already provided Qwest with ample opportunity to examine and understand the TNS processes, both during the evidentiary hearings and as part of the 2000 customer location data processing. Qwest repeatedly raised its concerns with the TNS data processing, including during the April 11, 2002, presentation of the Initial Order to the Commission and the subsequent Commission meeting to consider the revised model run. The Commission has repeatedly rejected those concerns. The record on this issue is closed, and Qwest is not entitled to continue to attempt to relitigate this issue by seeking clarification of a procedural order that has long since been superceded by a final Commission decision.

2. Qwest's Request Is Procedurally Improper.

Even if Qwest could seek clarification of a procedural order that has been superceded by a Commission final order, Qwest is not seeking to clarify the May 9 Procedural Order. Rather, Qwest has filed a motion to compel responses to discovery requested of a third party in the guise of a request for clarification. The Commission should consider – and reject – Qwest's request for the motion to compel that it is, not for the request for clarification that it purports to be.

Qwest's specific request for relief demonstrates Qwest's actual objective. Qwest requests an order from the Commission "requiring TNS to produce the underlying data behind its 2000 customer location run prior to final payment of the balance of its processing costs." *Id.* A party seeking production of data from an unwilling party seeks Commission assistance in the form of a

Spitzer, at a minimum, stated a similar position during the open meeting hearing on May 30,

request for *subpoena duces tecum* or motion to compel responses to discovery requests. Qwest sidesteps that procedure, seeking the same relief in a request for clarification of a procedural order, without specifically identifying the information that Qwest is asking the Commission to compel or providing any explanation of, or justification for, its need for additional information. Qwest asks only generically for “underlying data,” which would permit Qwest to determine unilaterally when or if sufficient information is produced. Such a request is patently unreasonable and not even arguably appropriate as “clarification” of the May 9 Procedural Order.

Perhaps more to the point, TNS is willing to provide Qwest with additional information – TNS just is not willing to do so without compensation for its services. Qwest, on the other hand, insists that the amount Qwest is obligated to pay TNS for processing Qwest’s 2000 customer location data should cover any and all additional information that Qwest may desire. Qwest thus is asking the Commission to intervene on Qwest’s behalf in a commercial dispute with a third party. That is not, and should not be, the Commission’s role, and Qwest’s request that the Commission authorize Qwest to withhold payment to TNS for services already rendered until TNS provides additional services at no charge is wholly improper.

3. Qwest’s Request Lacks Substantive Merit.

Even if Qwest’s request could somehow be considered timely and procedurally proper (which it cannot), Qwest is not entitled to the “clarification” it seeks. Qwest bases its “request for clarification” on its “belie[f] that the Procedural Order did not contemplate that the parties pay for the work done by TNS to incorporate the 2000 Arizona customer location data into the HAI model by TNS without being provided access to the underlying information and

2002.

documentation that supports it.” Qwest Request at 3. Qwest’s “belief” has no basis in the unambiguous language of the May 19 Procedural Order. Nothing in that order made *any* connection between the requirement that parties pay their share of the fees to process the data and each party’s satisfaction with the amount of information it receives from TNS. Any such connection would have been counterproductive at best in light of Qwest’s demonstrated antipathy to using TNS to process the data. Qwest now attempts to suggest such a link as a means of compelling TNS to respond to Qwest’s requests for information above and beyond the data that TNS has provided to Qwest and all other parties.

As usual, Qwest provides only a selected portion of the correspondence that has been exchanged between it and TNS. Enclosed as Exhibit A, for example, is the Tuesday, May 14, 2002 correspondence from Charles White of TNS in response to Mr. Fleming’s Friday, May 10, 2002 letter (included in Exhibit A to the Qwest Request). As that correspondence indicates, TNS provided the parties with geocoded customer location data, customer location data with road surrogate points, cluster output files, and cluster data files. These files contain each geocoded point, an indication of whether each point was a geocode or surrogate, and cluster to which that point was assigned. Such information permits any party to plot the points, review the clusters, determine detailed information on the clusters, and run its own algorithm to test the results. TNS also provided the parties with access to the data via a server established by TNS for prompt dissemination of data and information. Qwest sought additional information from TNS to make use of this access and retrieve data. The correspondence and email record clearly demonstrates that TNS processed the year 2000 location data as required by the order and worked diligently to fairly and efficiently distribute that data to the parties.

Qwest, however, seeks even more information from TNS. This information, however,

was not something TNS was required to create, prepare and produce to process the year 2000 data. As Mr. White explained in May, "in all previous proceedings in working with AT&T and Worldcom, [TNS has] never produced the detailed documentation or any of the intermediate data currently requested by Qwest." Attachment A, letter p. 1, para. 1. Nor had Qwest requested such documentation or data when TNS processed the data used during the evidentiary hearings. TNS nevertheless provided additional information to Qwest (as well as to AT&T and WorldCom) in an exchange of over 30 e-mails during the month of May 2002, while TNS was processing the 2000 data. Qwest remains unsatisfied, even after TNS offered to undertake the additional work necessary to provide more detailed and extensive information pursuant to a separate engagement. *See* Qwest Request, Ex. B at 1 (September 27, 2002 e-mail from Charles White to Peter Copeland).

Qwest does not want clarification of the May 9 Procedural Order. Rather, Qwest wants the Commission to order a third party vendor to provide Qwest with services for which Qwest is not willing to pay. TNS charged the parties for the work it performed in processing the 2000 data during May 2002, and TNS provided the results and documentation it provides for the fee it charged. If Qwest wants additional service from TNS, Qwest should pay for that additional service, not require the Commission to penalize TNS for refusing to give Qwest additional service for free.

CONCLUSION

For the foregoing reasons, the Commission should deny Qwest's request for expedited clarification of the May 9 Procedural Order. The Commission required the parties to engage TNS to process the Qwest 2000 customer location data and to share the fees that TNS charges for providing that service. Accordingly, the Commission should order Qwest immediately to pay

TNS the remaining \$10,000 of Qwest's share of those fees without further condition.

Dated this 14th day of November 2002.

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

By: John S. Walters for
Richard S. Walters
1875 Lawrence Street, #1503
Denver, Colorado 80202
303-298-6741 Phone
303-298-6301 Facsimile
rwalters@att.com E-mail

Greg Kopta
DAVIS WRIGHT TREMAINE LLP
1501 Fourth Avenue
2600 Century Square
Seattle, WA 98101-1688
206-628-7772
206-628-7699 (Facsimile)

Attorneys for AT&T of the Mountain States,
Inc.

EXHIBIT A

Burke, Joan

From: CWhite@tnstelecoms.com
Sent: Tuesday, May 14, 2002 7:38 AM
To: Garrett Fleming
Cc: Denney, Douglas (Doug), NCAM; Geoffrey Murphy; klandis@tnstelecoms.com; Peter Copeland; Lieberma@lga.att.com; 2443654@mcimail.com
Subject: TNS Telecoms Response to Qwest's May 13th Requests



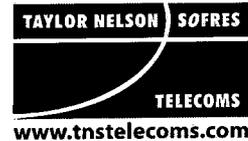
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Gary,

Attached please find TNS Telecoms' response to the your letter yesterday. Should you still want a conference call this afternoon please let me know. Also, please send us the contact information for those in the proceeding at your convenience so that we can send the additional information out later today.

Thanks!

Charles A. White
Vice President
Marketing and Business Development
TNS Telecoms
101 Greenwood Ave, Suite 502
Jenkintown, PA 19046
(267) 287-0111
<http://www.tnstelecoms.com>



May 14, 2002

Mr. Gary Fleming, Senior Director
Qwest
1801 California St. 47th Fl
Denver, CO 80202

Re: Response to QWEST Letter to TNS Telecoms – May 13th

Dear Mr. Fleming:

Thank you for your letter yesterday detailing Qwest's request for information regarding the creation of custom HAI data based on the Qwest Arizona customer location data. I am writing to respond to that request on behalf of TNS Telecoms.

It is the goal of TNS Telecoms to make any and all reasonable efforts to assure that Qwest, the Arizona Commission and AT&T/Worldcom have the most complete understanding of the procedures TNS Telecoms is utilizing to create the HAI input data. However, as discussed in our May 13th conversation, some of Qwest's current requests have the potential to hinder our ability to meet the current timeframe for completion of the input data by shifting our focus away from the data creation. Given the order of the ALJ in this proceeding it is TNS Telecoms position that the completion of the customer location input data is our highest priority in this matter.

It should be noted that in all previous proceedings in working with AT&T and Worldcom we have never produced the detailed documentation or any of the intermediate data currently requested by Qwest. Thus, our intention in this situation was and is to certainly include Qwest on any and all distributions of documentation or work products, but typically that distribution occurs only at the conclusion of the data production and not during the process. Realizing that this is a special case, as Qwest has supplied their own customer location files, we will certainly agree to provide intermediate output at each of the following four natural breaking points in the process:

1. Geocoded Customer Location Data (with appropriate longitude and latitude)
 - a. To be released later today along with other summary data for validation
2. Customer Location Data with road surrogate points
 - a. Estimated release: May 20th
3. Cluster output files
 - a. Estimated release: May 22nd

4. Cluster data files (to be used to run the HAI model)
 - a. Estimated Release: May 23rd

Given the nature of the above processes, the estimated release dates should only be considered guidelines and not a firm timetable. These four data releases should be sufficient in meeting all of Qwest's requests for intermediate data elements made in the May 13th letter.

Regarding the requests for both documentation and "logic" surrounding various processes within the data creation, we will certainly work to enable Qwest to have a thorough understanding of the data, and the processes to create it, after it has been created. However, as noted earlier, much of the requested information is not currently available without preparation. Further, in the case of "algorithms" and "logic" we are in need of more detailed conversations reviewing Qwest's specific needs, as no specific "algorithms" are used in the process, but rather numerous data processing procedures in various computing languages. I have no doubt that when time allows we will be able to work through these issues in the most productive way possible, but that time will not be available until after the data has first been created.

As to TNS Telecoms releasing intermediate runs of the HAI mode itself, TNS Telecoms provides only expertise and services in creating customer location data. Therefore, TNS Telecoms does not engage in running the HAI model in any capacity and thus, we will not be releasing model outputs in this proceeding.

Lastly, while we will make all efforts to finish the data creation as soon as possible, we are not able to commit to May 21st as date of the data's release. Per my previous affidavit in this proceeding TNS Telecoms cannot commit to having the data finished before May 24th.

Please feel free to call me with any questions or if you would prefer to arrange a conference call among the interested parties.

Cordially,

Charles A. White
Vice President
Marketing and Business Development

CERTIFICATE OF SERVICE

I hereby certify that the original and 13 copies of the Opposition of AT&T to Qwest Request for Expedited Clarification of Procedural Order, filed in Docket No. T-00000A-00-0194, were hand delivered this 14th day of November 2002, to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and that a copy of the foregoing was hand-delivered this 14th day of November 2002 to the following:

Ernest Johnson
Director – Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Lyn Farmer
Chief Hearing Officer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Dwight D. Nodes, ALJ
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

and that a copy of the foregoing was sent via United States Mail, postage prepaid, on the 14th day of November 2002 to the following:

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave.
Suite 2600
Phoenix, AZ 85012
Attorneys for Qwest

Janet Livengood
Z-TEL Communications, Inc.
601 South Harbour Island
Suite 220
Tampa, Florida 33602
Attorneys for Z-Tel Communications, Inc.

Steve Sager, Esq.
McLeod USA Telecommunications
Service, Inc.
215 South State Street, 10th Floor
Salt Lake City, Utah 84111
Attorneys for McLeod USA

Ray Heyman
Roshka Heyman & DeWulf
400 North 5th Street
Suite 1000
Phoenix, AZ 85004
Attorneys for Alltel Communications

Michael W. Patten
Roscoe Heyman & DeWulf
400 North 5th Street
Suite 1000
Phoenix, AZ 85004
Attorneys for Cox, e-spire, McLeod USA,
Teligent, Z-Tel, MGC Communications

Dennis Ahlers
Echelon Telecom, Inc.
730 Second Avenue South
Suite 1200
Minneapolis, MN 55402
Attorneys for Echelon Telecom, Inc.

Thomas F. Dixon
WorldCom, Inc.
707 17th Street
Suite 3900
Denver, CO 80202
Attorneys for WorldCom

Darren S. Weingard
Stephen H. Kukta
Sprint Communications Co.
1850 Gateway Drive
7th Floor
San Mateo, CA 94404-2647
Attorneys for Sprint

Steven J. Duffy
Ridge & Isaacson, P.C.
3101 North Central Avenue
Suite 1090
Phoenix, AZ 85012-2638
Attorneys for Sprint

Penny Bewick
New Edge Networks
P.O. Box 5159
3000 Columbia House Blvd.
Vancouver, Washington 98668
Attorneys for New Edge

Marti Allbright, Esq.
MPOWER Communications Corporation
5711 South Benton Circle
Littleton, CO 80123
Attorneys for MGC Communications

Thomas H. Campbell
Lewis & Roca LLP
40 N. Central Avenue
Phoenix, AZ 85004
Attorneys for Rhythms Links, Inc., WorldCom,
Echelon Telecom, Allegiance

John Connors
WorldCom, Inc.
Law and Public Policy
707 17th Street, Suite 3600
Denver, CO 80202
Attorney for WorldCom

Eric Heath
Sprint Communications
100 Spear Street
Suite 930
San Francisco, CA
Attorneys for Sprint

Megan Doberneck, Senior Counsel
Nancy Mirabella, Paralegal
Covad Communications Company
4250 Burton Drive
Santa Clara, CA 95054
Attorney for Covad

Michael M. Grant
Gallagher and Kennedy
2575 E. Camelback Road
Phoenix, AZ 85016-9225
Attorneys for ELI, Covad, New Edge

Michael B. Hazzard
Kelley Drye and Warren
1200 19th Street, NW
Washington, DC 20036
Attorneys for Z-Tel Communications

Andrea Harris
Allegiance Telecom
2101 Webster
Suite 1580
Oakland, CA 94612

Brian Thomas
Vice President, Regulatory – West
Time Warner Telecom, Inc.
223 Taylor Avenue North
Seattle, WA 98109

A handwritten signature in cursive script that reads "Ellen Bruce". The signature is written in black ink and is positioned above a horizontal line.

Scott S. Wakefield
RUCO
1110 West Washington
Suite 220
Phoenix, AZ 85007

Kevin Chapman
SBC Telecom, Inc.
300 Convent Street, Room 13-Q-40
San Antonio, TX 78205