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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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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

IN THE MATTER OF QWEST CORPORATION'S COMPLIANCE WITH SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. RT-00000F-02-0271

ARIZONA CORPORATION COMMISSION

DOCKET NO. T-01051B-02-0871

Complainant.

v.

QWEST CORPORATION,

Respondent.

**PROCEDURAL ORDER**

**BY THE COMMISSION:**

On August 15, 2003, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") filed a Motion to Compel Qwest Corporation to answer AT&T's Fifth Set of Data Requests to Qwest. AT&T requests that Qwest be compelled to answer AT&T/TCG 05-001(c) and 05-002.

On August 26, 2003, Qwest filed a Response to AT&T's Motion.

By Procedural Orders dated August 20 and 22, 2003, the matter was set for oral argument on September 3, 2003.

In the proposed Settlement Agreement a minimum of \$8,100,000 and a maximum of \$8,900,000 is allocated to discount credits for Eligible CLECs for Section 251(b) and (c) services. In data request 05-001(c), AT&T requested Qwest to provide the maximum amount Qwest would have to pay in discount credits to all Eligible CLECs for the period January 1, 2001, through June 30,

1 2002, if Section Discount Credits includes Section 251 (b) and (c) services, all intrastate services and  
2 all interstate services purchased by Eligible CLECs. Qwest objected to providing information  
3 regarding interstate services on the grounds that with respect to interstate services, the request is not  
4 calculated to lead to discovery of admissible evidence because it relates to services outside the  
5 Commission's jurisdiction and the proposed settlement does not include interstate services.

6 Data request 05-002 sought copies of all documents, worksheets, communications,  
7 memorandums and emails provided or sent by Qwest to Staff from the commencement of settlement  
8 discussions through July 25, 2003. Qwest objected to this request on the grounds that the information  
9 requested in 05-002 is not discoverable under Rule 408 of the Arizona Rules of Evidence. During the  
10 September 3, 2003 Procedural Conference, AT&T withdrew its request vis a vis 05-002.

11 With respect to data request 05-001(c), AT&T argued that the amount of discount credits  
12 that would have been available if interstate services were included is relevant to permit the parties  
13 and the Commission to meaningfully evaluate the reasonableness of the settlement. AT&T argues  
14 that because on its face the settlement requires CLECs to release all claims, CLECs must be able to  
15 evaluate the magnitude of its claims. In addition, AT&T argues the Commission may find the  
16 amount of interstate services to be relevant to the evaluation of proposed remedies.

17 Qwest argues that request 05-001(c) is not relevant because the Commission does not have  
18 jurisdiction over interstate claims, such services are not within the scope of opt-in provisions and  
19 furthermore, that Qwest does not intend the settlement to affect interstate claims.

20 We concur with AT&T that, despite Qwest's recent statement to the contrary, the settlement  
21 on its face arguably affects all CLECs' claims against Qwest for Section 251(b) and (c) services,  
22 intrastate and interstate. The un-filed agreements that formed the basis of the litigation at issue  
23 contained discount provisions on Section 251(b) and (c) intrastate and interstate services. Whether  
24 the Commission has jurisdiction over interstate services or not, knowing the scope of discount credits  
25 on interstate services may be relevant to the Commission's evaluation of the remedies provided in the  
26 settlement agreement.

1 IT IS THEREFORE ORDERED that AT&T's Motion to Compel is granted with respect to  
2 AT&T data request 05-001(c).

3 DATED this 4<sup>th</sup> day of September, 2003.

4  
5 *Jane L. Rodda / by Rodda*  
6 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

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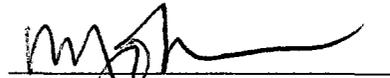
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